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IS EQUAL TREATMENT ENOUGH?

The Current Debate Regarding Equality v. Equity

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Equality v. Equity in the Workplace

1. When all applicants are treated equally, does it truly result in equal employment? Some statistics tell the story.

Post Pandemic Jobless Rates – Race
December 2021

- Blacks 7.1%
- Hispanics 4.9%
- Asians 3.8%
- Whites 3.2%

Long term unemployed job seekers – Age
October 2021

- Age 55+ 41.2%
- Ages 16-54 32.2%

2020 Disabled Worker Unemployment Rate: 12.6%

Women's median income is 82% of men's
(Bureau of Labor Statistics 2019)

Women request raises as frequently as men;
receive a raise 5% less often
(McKinsey 2021)

8% (41) of Fortune 500 company CEOs are female

.08% (4) of Fortune 500 company CEOs are African American
(Pew Research)

When men and women submit blind applications (no photo, no name), women's likelihood of getting the job increases by 25-46%
(Harvard/Princeton study)

Companies with diverse workforces –
23% higher cash flow per employee
(Deloitte)

Companies with diverse management –
19% greater revenue than nondiverse
(Boston Consulting Group)

76% of job seekers believe a diverse work force is important in evaluating job opportunities
(Glass Door 2020)

80% of job seekers believe inclusiveness is an important factor in choosing an employer
(Deloitte)

2. The statutory and regulatory framework that was intended to achieve equal employment
    a. Federal Statutes
        i. Equal Pay Act (1963) – prohibits discrimination on the basis of sex in wages paid to men and women
        ii. Title VII (1964) – prohibits employment discrimination on the basis of race, color, religion, sex, and national origin
        iii. Age Discrimination in Employment Act ("ADEA") (1967) – prohibits discrimination based on age against people over age 40
        iv. Americans With Disabilities Act (1990); ADA Amendments Act (ADAAA) (2008) – prohibits discrimination based on an individual's disability and requires employers to provide reasonable accommodations to employees and applicants for employment
        v. Family Medical Leave Act (1993) – provides twelve weeks of unpaid parental leave for both women and men in connection with the birth or adoption of a child; to care for a sick family member; and in connection with the employee's own illness

In addition to the federal laws, most states have laws prohibiting discrimination on the same basis as the federal statutes and several states also prohibit discrimination based on gender identity and/or preference.

    b. Federal regulatory efforts to promote more equitable hiring and employment practices
        i. Executive Order 11246: Affirmative Action (1965)
            1. Requires federal contractors to implement written affirmative action plans designed to recruit and advance protected class members by way of outreach efforts, training programs, and other initiatives intended to expand protected class members' equal opportunity in the workplace
            2. Private employers are encouraged to have and implement written affirmative action plans

[The U.S. Supreme Court recently accepted two Affirmative Action cases related to college admissions. Would a decision prohibiting consideration of protected class in admissions impact affirmative action in employment?]

        ii. Hiring Initiative to Reimagine Equity (HIRE) (January 12, 2022) – EEOC initiative to work with "a broad array of stakeholders" in a "multi-year collaborative effort" to "expand access to good jobs for workers from under-represented communities and help address key hiring and recruiting challenges" by gathering information, identifying strategies, targeting tech-based hiring systems, and providing resources related to "evidence-based" recruiting and hiring practices that advance equity.

This new initiative remains largely undefined.

3. Progress in the five (5+) decades spanned by legislative efforts to level the employment playing field

According to an EEO memo prepared by the Center for Employment Equity for the Biden administration:

a. There was progress for African Americans from 1960-1980, after which it stalled.
b. There was progress for Women and Hispanics from 1960 until the mid- 1990s, during which it stalled.
c. The total number of segregated workplaces decreased through 1980 and have increased since.
d. White and African American earnings made progress toward equal pay for equal work through 1980; were stagnant in the 1990s, and disparities began rising in the 2000s.
    i. The wage gap between White and African American workers: 2010 – 10.2%; 2019 - 14.9%
    ii. In contrast, the wage gap between White and Hispanic workers decreased: 2010– 12.3%; 2019– 10.8%
e. The gender wage gap has decreased since 1973, when women's average wages were 43.4% less than men's. In 2018, the gap narrowed to 19.4%. Disparities in the occupations and industries in which women are employed remain.

4. Shifting the focus to equity: Over the past few years, efforts to level the playing field for protected class members have been substantially expanded beyond what is required to provide legally required equal rights. Workplaces have begun to adopt culture changes intended to promote "equity" in order to achieve the goal of true equal employment opportunity.

a. Some of the most common and pervasive strategies that employers have adopted to address diversity issues have not, at least standing alone, proven to be effective, including:
    i. diversity training;
    ii. DEI committees;
    iii. internal grievance procedures; help lines, and formal complaint policies; and
    iv. public EEO commitments by employers.

    Although these are positive steps and 1 & 3 are important to avoid legal liability, these efforts, alone, have not resulted in more diverse workplaces, especially in the upper level management of employers.

b. Policies and practices that have proved successful in hiring, retaining, and advancing diverse employees include those that address hiring and promotion practices; pay and benefit equity; individual employee success and development; and broader participation in the work, leadership, and social fabric of the employer, including:
    i. Hiring/Promotion:
        1. posting all open positions, particularly for management and executive positions for which incumbants often select their successors;
        2. use of hiring committees with diverse members, instead of individual supervisors or nondiverse committees to make hiring and promotion decisions;
        3. use of diverse recruiters and/or direction to current recruiters regarding

the company's interest in including diverse candidates in the pool;
4. inclusion of multiple diverse candidates in the pool of candidates for a position, including encouraging diverse applicants to apply for open positions;
5. willingness to select a diverse candidate who is ranked lower by the interview panel – often traditional metrics used by recruiters or hiring committees skew in favor of non-diverse candidates; and
6. re-evaluate the criteria used to evaluate candidates for employment or advancement; consider using a consultant with expertise in DEI issues to help develop criteria appropriate for the position.

c. Pay/benefits:
   i. benefits to assist with child care expense;
   ii. paid family leave to both mothers and fathers;
   iii. evaluating and correcting wage disparities between employees who are performing comparable tasks
d. Targeted programs for protected class employees:
   i. internship programs for protected class members;
   ii. individual mentoring – preferably with someone of the same protected class serving as a mentor;
   iii. individual assessment of and targeted training for employees, rather than, or in addition to, general training programs;
   iv. provide flexible work hours/locations;
   v. talk with individual employees about their goals, work preferences; encourage all employees to participate in meetings – call on those who don't volunteer information to share their ideas, opinions;
   vi. spread responsibility for housekeeping tasks among employees of all genders rather than expecting certain people (usually female) to perform them.
e. Other strategies to encourage diversity and retention of diverse employees:
   i. making achievement of diversity and inclusion goals a part of managers' performance expectations, on which their own raises depend;
   ii. structure work groups or committees with diverse members;
   iii. sponsor social activities that allow employees to get to know one another; structure them in ways that result in diverse employees interacting rather than employees congregating with their regular group of friends.

OTHERS – what has worked for the attendees?

5. Will DEI efforts result in legal risk to employers since our legal structure protects "equal" treatment"?

National Strategy on Gender Equity and Equality

THE WHITE HOUSE
WASHINGTON

National Strategy on Gender Equity and Equality

Letter from the President and Vice President

America is unique among the nations of the world because we were built on an idea: that every one of us is equal in dignity and deserves to be treated equally. Though we have never fully lived up to that idea—not at the time of our founding, nor in the centuries since—it is the defining hallmark of our country that we have never stopped reaching for it. From the Emancipation Proclamation, to the passage of the 19th Amendment, to the Voting Rights Act and the Civil Rights Act, to the fight for reproductive rights and marriage equality—and countless movements and victories before and since—America has been strengthened through the years by our tireless pursuit of greater equity for all.

This document, the first-ever United States government strategy on gender equity and equality, is a part of that noble American tradition. It comes at an inflection point for the economic security, safety, health, and well-being of women and girls in our nation and around the globe. COVID-19 has exacerbated pre-existing economic, health, and caregiving crises that disproportionately impacted women and girls long before the pandemic struck. Following the worst economic collapse since the Great Depression, women's participation in the American labor force plummeted to its lowest level in over 30 years. Rates of gender-based violence have risen significantly, and racial and ethnic inequity has deepened. Globally, the pandemic has fueled increased economic insecurity for women and girls, and in far too many places—including, far too often, here in America — their fundamental rights remain at risk.

This moment demands a bold and united response—a commitment to do more than just rebuild to a status quo that wasn't working for women and girls, but rather to build back better. We have already taken major strides, leading a strong and comprehensive response to COVID-19 both domestically and globally, getting our economy back on track, and centering equity in our recovery and response efforts, but we still have work to do to ensure equal opportunity for all people, regardless of gender. As we work to invest in the American people and build an economy that deals everyone in, we have an unprecedented opportunity to chart a course for a future in which gender equity and equality are instilled in every part of our country, and—through our defense, diplomacy, foreign aid, and trade efforts—to advance the rights and opportunities of women and girls across the world.

This effort is personal to us, as it has been throughout our lives and careers; as local elected officials and as U.S. senators, we each worked tirelessly to expand services and deliver justice to survivors of gender-based violence, fought for equal pay and against abuses of power, and helped craft legislation to bring greater dignity to the lives of all workers. Now, as President and Vice President, our Administration is carrying that work forward, making progress toward gender equity and equality a priority from day one.

On the day that we were sworn in together, the Vice President toppled a barrier to women's participation that had stood for more than 200 years. Our Cabinet and senior staff are the most diverse and gender-balanced in history. And we have taken executive action aimed squarely at advancing equal opportunity regardless of gender, race, or any other characteristic. On International Women's Day, the President issued an Executive Order establishing the White House Gender Policy Council to ensure that gender equity and equality are at the forefront of America's domestic and foreign policy. That Executive Order also mandated the development of this first-ever national strategy to guide our work on gender equity and equality as a government and as a nation.

This strategy outlines an ambitious agenda for this Administration and those to come—a roadmap to help our nation close pernicious gender gaps and propel us toward a world with equal opportunity for all people. The restaurant worker organizing for fair wages. The migrant farmworker putting food on our tables. The leader fighting for a place at the negotiating table where the future of their country will be determined. The girl studying hard, despite the barriers that stand in her way, to discover the next vaccine or scientific breakthrough in the fight against climate change. The single father who depends on paid leave to care for his family. The woman migrating with her children to flee gender-based persecution and seek a safer life. The transgender athlete who dreams of the chance to compete free from discrimination. The millions of frontline workers—disproportionately women—whose heroic work in our hospitals, grocery stores, schools, child care centers, domestic violence shelters, nursing homes, and elsewhere kept us going during one of the darkest periods in recent history. This strategy addresses barriers faced by those who belong to underserved and historically marginalized communities that have long been denied full opportunity: women and girls of color, LGBTQI+ people, people with disabilities, and all of those whose lives are affected by persistent poverty and inequality.

Ensuring that all people have the opportunity to live up to their full potential, regardless of gender identity or other factors, is not only a moral imperative. It is a strategic imperative—a continuation of our national journey toward justice, opportunity, and equality set forth in our creation—that will advance prosperity, stability, and security at home and abroad in the years to come.

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Section I: Guiding Principles

Gender equity and equality are imperative to strengthening communities, economies, and nations. We envision a world where every person has equal opportunity; where their safety and security are guaranteed; and where they are treated equitably and fairly at home and in their schools, workplaces, and communities. In the face of multiple challenges, the Biden-Harris Administration is committed to building back better, rather than simply returning to the status quo.

The status quo has not worked for women, girls, and all those who experience gender-based discrimination—especially those who belong to underserved communities that have been systematically denied full opportunity to participate in economic, social, civic, and political life and faced structural barriers to equality. Women's work—both paid and unpaid—is often overlooked and devalued, despite its critical role in the global economy. Gender-based violence is endemic in homes, schools, workplaces, and communities, and far too often a hallmark of conflict settings and humanitarian crises. Women and underserved groups are dramatically underrepresented at decision-making tables. Gender inequity and inequality are rife across entire communities and nations.

By contrast, the Biden-Harris Administration is building back better. We are addressing the discrimination and structural barriers that have hampered women, especially women of color, from fully participating in the labor force and from being paid and treated equitably when they do. We are tackling our country's caregiving crisis head-on, including by investing in care infrastructure and supporting the care workforce. We are addressing the pernicious effects of health inequity and the need for access to quality, affordable health care, including sexual and reproductive health services, and we are focused on preventing and responding to gender-based violence wherever it occurs. We are working to eliminate longstanding disparities in our education, justice, and immigration systems.

Building back better requires not just policy reform, but also a shift in the social and cultural norms that undermine gender equity and equality, undervalue work traditionally and disproportionately carried out by women, and prevent rights on paper from being fully implemented in practice. This kind of structural change is urgently needed as we recover from a pandemic that has exacerbated economic, health, and caregiving crises, face the most significant reckoning over racial justice since the 1960s, and witness grave threats to reproductive rights and voting rights.

We are committed to American leadership on the world stage. Recent conflicts and crises around the world have demonstrated, once again, that times of acute instability and authoritarian resurgence reflect and exacerbate gender inequality and that full participation is critical to meeting the global challenges we face. In Afghanistan, the universal human rights and fundamental freedoms of a generation of girls and women are in jeopardy, threatening the future and security of the region. In Tigray, conflict-related sexual violence has been used as a tactic of war, further undermining stability. In Central America, women's economic insecurity and gender-based violence contribute to the root causes of migration. Around the world, climate change poses disproportionate risks to the health, safety, and economic security of women and girls.

At home and around the world, we are committed to ensuring that every individual is valued for their contributions in all fields, from classrooms to boardrooms; from sports fields to factory floors; from academia to the arts. We are dedicated to ensuring that they have increased opportunities to serve as leaders and innovators in meeting the challenges ahead. We are also committed to their full participation in political and civic life and their meaningful engagement in conflict resolution and peacebuilding during periods of conflict and crisis. As we work with like-minded partners to defend democracy and human rights in the United States and around the world at a time when democracy is under threat, we recognize that advancing gender equality is central to that mission and must be integrated throughout American defense, diplomacy, foreign aid, and trade efforts.

Advancing gender equity and equality is therefore both a moral imperative and a strategic one; its pursuit drives the growth, development, and security of communities, nations, and the global economy. To build back better, everyone—regardless of their gender or gender identity—must have the opportunity to realize their full potential.

This strategy is the first-ever U.S. national gender strategy, produced by the White House Gender Policy Council, which will guide its implementation.

Section One establishes the guiding principles that undergird our efforts to advance gender equity and equality. Section Two outlines ten strategic priorities, acknowledging and addressing their interconnection. Finally, Section Three elaborates on the whole-of-government effort that is required for implementation, which will ensure that a focus on gender is mainstreamed across the work of the federal government.

Whole-of-Government Implementation

This strategy is the product of and roadmap for a whole-of-government effort to advance gender equity and equality. Responsibility for realizing its bold vision is not the task of a sole agency or White House office, but rather a responsibility that cuts across the work of the Biden-Harris Administration in both domestic and foreign affairs.

In order to mainstream gender equity and equality across our domestic and foreign policy, we will elevate gender in strategic planning and budgeting, policy development, management and training, and monitoring and evaluation efforts. We will also strengthen data collection and analysis and take steps to ensure transparency and accountability for progress toward the goals laid out in this strategy.

This work will be conducted in partnership with Congress, state, local, territorial, and Tribal governments, foreign governments and multi-lateral organizations, and non-governmental actors—including faith-based groups, civil society, and private sector organizations—who were also consulted in the development of the strategy and have an essential role in the work ahead.

Intersectional Approach

This strategy is part of the Biden-Harris Administration's efforts to ensure that all people are treated fairly and equitably and have the opportunity to reach their full potential. Therefore, it aims to address intersecting forms of discrimination and advance equity and equality.

By equity, we refer to the consistent and systematic fair, just, and impartial treatment of all individuals, including those who belong to underserved communities that have been denied such treatment, such as women and girls; Black, Latino, and Indigenous and Native American persons, Asian Americans, Native Hawaiians, and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

By equality, we refer to the goal of reaching gender equality at home and abroad, meaning a world in which equal opportunity is afforded to all people regardless of gender or any other factor.

This strategy reflects a commitment to address gender broadly. Our work is deeply motivated by a commitment to women and girls, in light of longstanding systemic discrimination and barriers which continue to affect their full participation and access to opportunity. We also combat discrimination and harmful gender norms that affect people of all genders: women and girls—including transgender women and girls—gender nonbinary and gender nonconforming people, as well as men and boys.

The strategy also addresses the impact of intersectional discrimination and bias on the basis of gender, race, and other factors, including sexual orientation, ethnicity, religion, disability, age, and socioeconomic status. Intersecting challenges negatively impact individuals in underserved communities, including communities of color, in the United States and around the world. In each of the strategic priorities identified below, policies, programs and approaches will be informed by the historical and current context of these overlapping burdens.

Interconnected Priorities

In our efforts to advance gender equity and equality and further prosperity and stability at home and abroad, we will focus on ten strategic priorities: (1) improving economic security and accelerating economic growth; (2) eliminating gender-based violence; (3) protecting, improving, and expanding access to health care, including sexual and reproductive health care; (4) ensuring equal opportunity and equity in education; (5) advancing gender equity and fairness in the justice and immigration systems; (6) advancing human rights and gender equality under the law; (7) elevating gender equality in security and humanitarian relief; (8) promoting gender equity in mitigating and responding to climate change; (9) closing gender gaps in science, technology, engineering, and mathematics (STEM) fields; and (10) advancing full participation in democracy, representation, and leadership.

We recognize that these ten priorities are interconnected. The education of girls affects their future economic security and that of our nation. Gender-based violence, including sexual harassment and abuse, hampers economic and political participation and influences the health and well-being of survivors. Restrictions on access to health care, including sexual and reproductive health services, undermine women's ability to take care of their families, advance in the workplace, and lead in all sectors. Our strategic objectives are inherently linked and must be addressed in concert to achieve our vision for gender equity and equality.

Section II: Strategic Priorities

Improve Economic Security and Accelerate Economic Growth

Strengthening women's economic security and labor force participation is essential to advancing gender equity and equality. Simply put, our nation's economy and the global economy cannot reach their full potential when half of the workforce is left behind. To achieve an equitable recovery at home and abroad, we must ensure that all people have equal access to good, well-paying jobs; address the persistent gender discrimination and systemic barriers to full workforce participation; invest in and strengthen the care infrastructure that our economy depends on; and promote financial inclusion and close the gender wealth gap.

In the United States and around the world, women, girls, and gender nonconforming people have long faced systemic discrimination that has inhibited their full participation in the labor force, undermining their economic security, as well as that of their families. The COVID-19 pandemic exacerbated these challenges. Millions of women—many disproportionately concentrated in hard-hit sectors—lost their jobs or were forced to leave them to care for their families. In the United States, women's labor force participation plummeted to its lowest level in over 30 years, with a disproportionate impact on women of color. Globally, women comprise only 39% of the labor force but represented well over half of pandemic-related job losses around the world.

The pandemic's disproportionate impact on women's economic security and labor force participation stems from deep-seated, structural inequities in the workplace. In the United States, the barriers to access start at the door, with discrimination in hiring leading to unemployment, underemployment and occupational segregation. Globally, women's labor force participation has stagnated over the past two decades, with women disproportionately concentrated in informal sector jobs and low-wage work. Nearly 100 nations have laws that inhibit women's economic participation—from limitations on the types of jobs they can hold to inequalities in property ownership—and in far too many nations, sexual harassment on the job remains legal. Furthermore, in nearly every country in the world, women earn less than men and do more unpaid work. In the United States, the wage gap remains a stubbornly persistent problem. In 2020, full-time year-round working women on average made only 83 cents on the dollar as compared to men—with women of color paid even less. For example, Black women earned 64 cents and Latinas earned 57 cents for every dollar earned by White men, with many Asian women, such as Vietnamese women earning similarly low wages. In 2019, the latest year for which data is available, Native women earned 60 cents for every dollar earned by White men.

Responsibility for paid and unpaid care work also creates barriers and fuels discrimination that hold women back in the workforce, making improvement of our domestic and global care infrastructure essential to advance women's economic security and that of their families. Across the world, even before the pandemic, women were responsible for nearly three-quarters of unpaid care work on average, undermining their ability to participate in paid work. They also make up the vast majority of the care workforce. In the United States, nearly 95% of child care

workers and 90% of home health care workers are women, disproportionately women of color, and the care workforce has been undervalued and underpaid for generations.

The lack of affordable, accessible child care, elder care, and home care, as well as family-supportive policies including paid family and medical leave, has taken its toll, with the United States falling behind its competitors in the share of women in the labor force. Demand for accessible, high-quality, affordable care is already high and only rising. Meanwhile, high costs and increasing shortages of care for disabled and older adults leave many to rely on unpaid caregiving, with more than one in six adult women serving as unpaid eldercare providers. Women also comprise the majority of caregivers to wounded, ill or injured service members and veterans. Women who bear the brunt of unpaid caregiving responsibilities often lack access to family-supportive policies in the workplace, and this is especially true for low-wage workers; the United States is one of the only countries in the world that does not guarantee any paid family and medical leave, and over 90% of the lowest wage workers, who are predominately women and workers of color, lack any access to paid family leave.

The gaps in caregiving infrastructure have also contributed to the gender and racial wealth gaps, which are exacerbated by women's broader exclusion from financial systems. Women face barriers in access to consumer loans and other credit products, and women business owners have less access to capital. These inequalities compound over the course of a woman's lifetime, jeopardizing her financial security later in life and affecting the generations that follow. Across the world, the effects of economic insecurity are profound; women are more likely to experience poverty, hunger, and housing instability. Their safety, too, is compromised, as economic insecurity often keeps women trapped in abusive situations and increases vulnerability to abuse.

The macroeconomic benefits of closing these gender gaps and supporting women's participation in the labor force are clear. In the United States, experts found that the gains in women's earnings over the past 40 years drove 91% of the income gains experienced by middle-class families. Estimates show that closing gender gaps in the workforce would add between $12 and $28 trillion in global GDP over a decade and addressing the gendered economic effects of the COVID-19 pandemic alone would generate up to $13 trillion in global GDP by 2030.

The full economic participation of women and girls is critical to our economic competitiveness. As part of our commitment to foster an equitable economic recovery and build back better for all, we will:

a. Promote Economic Competitiveness by Advancing Women's Employment in Well-Paying Jobs

To strengthen U.S. economic competitiveness and support working families, we will ensure that women have the support they need to enter, stay, and advance in the labor force, and encourage their access to well-paying, good quality jobs. We will also work to ensure that women have a free and fair choice to join a union and that domestic workers receive the legal benefits and protections they deserve. We will seek increased pay for jobs that are disproportionately held by women by pursuing an increase in the minimum wage and the elimination of the tipped minimum wage and the subminimum wage for all workers, including those with disabilities.

To promote entrepreneurship and innovation, we will reduce gender discrimination in business and consumer lending and close persistent gender gaps in access to capital by catalyzing investment in women-owned businesses, including small and medium-sized enterprises, in the

domestic and global marketplace. This includes promoting data collection and transparency in the financial, technology, and venture capital sectors to track the proportion of investments in women-led businesses, as well as the collection of sex-disaggregated data on asset ownership at the household level to track the gender wealth gap.

To ensure equitable access to 21st century jobs of the future, we will support access to high-quality careers, technical education, and community college, and increase the maximum Pell Grant to make postsecondary education affordable for low-income students. We will also support high-quality job training to make critical labor skills available irrespective of gender and without the burden of debt. We will work to broaden access to gender equitable workforce development programs, such as registered apprenticeships and pre-apprenticeships, and strengthen programs that help expand pathways for women to enter, re-enter, and lead in all industries, including non-traditional occupations and STEM fields. We will strengthen support for military spouses, the vast majority of whom are women, to find and sustain employment, recognizing the challenges facing highly-mobile military families. We will support efforts to address how gender norms and outdated workplace practices fuel occupational segregation and devalue work in industries disproportionately populated by women. Furthermore, we will work to address the rise in automation and insecure work arrangements—from the growth in independent contracting to the erosion of unions and workers' rights—in ways that are gender equitable, recognizing that women workers are disproportionately vulnerable to these trends.

Globally, we will promote women's access to good-paying, decent jobs in the formal sector and address the overrepresentation of women in the informal economy, including by promoting sourcing and procurement from women-owned business. We will also support workforce development and training to advance women's representation in non-traditional sectors, such as STEM and construction. We will promote women's economic opportunities through bilateral and multilateral diplomacy and foreign assistance, with a focus on ensuring women have the capabilities and resources needed to participate in the economy; access to well-paying jobs and leadership roles; and the social and institutional supports required to compete in the workplace. We will also promote efforts to confront gender stereotypes that devalue women's work around the world.

b. Address Persistent Gender Discrimination and Systemic Barriers to Full Workforce Participation

To close the gender wage gap in the United States, we will work to strengthen laws prohibiting wage discrimination on the basis of gender, race, and other characteristics, and will increase resources for enforcement. We will also promote pay transparency, taking steps to increase analysis of pay gaps on the basis of gender, race, and other factors, and outline plans to eliminate these disparities. We will pursue policies to eliminate reliance on prior salary history in compensation decisions, which can perpetuate and compound the effects of prior discrimination. Furthermore, we will support policies to prohibit discrimination against pregnant and parenting workers. We will also work to ensure fair and flexible scheduling practices and access to paid sick days.

We will aim to eliminate harassment and other forms of discrimination in the workplace, including sexual harassment. This includes increasing transparency and accountability by ending forced arbitration and mandatory nondisclosure agreements that prevent workers from pursuing

their day in court and by strengthening prevention efforts to create a work environment where all workers can thrive.

The federal government, as the nation's largest employer, will update policies and programs to prevent and address sexual harassment and other forms of harassment and discrimination across the federal workforce and our armed services, including supports for survivors. We will also address barriers to reentry into the labor force from the criminal justice system, particularly those barriers that are unique to women, girls, and gender nonconforming people.

Globally, we will work bilaterally and multilaterally to help implement public and private sector policies, laws, and regulations that level the playing field in the workplace by eliminating gender-based restrictions on occupations held and hours worked; spousal consent requirements; unequal inheritance and property ownership laws; and other legal barriers. We will welcome adoption of the International Labor Organization Convention on Eliminating Violence and Harassment in the World of Work, enacted in the wake of the global #MeToo movement to protect workers from harassment in the workplace. We will also address gender gaps in access to productive resources for women in the agricultural labor force, the sector in which two out of three women in the least developed countries are employed.

c. Strengthen Working Families and the Economy by Investing in Care Infrastructure

To help rebuild the economy and lower costs for working families, we will invest in our country's care infrastructure.

We will ensure that families have access to affordable, high-quality child care, cutting costs of child care by more than half for most families. We will also promote universal pre-kindergarten education, giving a head start to our earliest learners and boosting labor force participation, as well as extend and expand tax credits like the Child Tax Credit so that parents can cover everything from buying diapers to putting food on the table to paying the rent or mortgage.

We will support workers and their families by creating a national paid family and medical leave program that is available to parents and caregivers, including chosen family members, and covers a range of needs, such as taking time to bond with a new child; caring for a seriously ill loved one; and healing from a serious illness or injury. We will also increase resources to expand access to quality, affordable home- or community-based care, so that families with aging relatives and people with disabilities can choose the care that meets their needs. And we will invest in our caregiving workforce – who are disproportionately women of color and have been underpaid and undervalued for too long – by creating care jobs with fair pay, dignity, and employment protections.

Globally, to lift millions of women and families out of poverty, the United States will join with allies to strengthen the global care infrastructure. We will leverage our role in multilateral economic institutions to promote government and private sector investment in care, including child, elder, and health care, and universal early childhood education, as well as support programs that expand access to and availability of care. We will work to support protections for the caregiving workforce—including domestic workers, the majority of whom are immigrants and from marginalized communities—to ensure they are adequately paid and protected under labor laws and a living wage. And we will promote reform for workers in the informal economy, whose economic and caregiving needs are too often overlooked in existing care infrastructure.

d. Promote Financial Inclusion and Close the Gender Wealth Gap

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Women are more likely to live in poverty than men—and significantly more likely to retire in poverty. To give them the opportunity to build, maintain, and pass on wealth, we will address barriers that erode women's earnings and impair their financial security, such as income inequality, debt burdens, lack of access to financial services, and housing costs, and support the growth of women-led businesses.

We will also work to reform consumer debt collection practices and narrow the retirement wealth gap that endangers women's economic security later in life. We will invest in financial literacy education and resources that enhance women's agency. We will aim to improve access to affordable housing and work to eliminate discriminatory practices and policies in lending. We will work to reduce barriers for eligible women and families to access public benefits through administrative reforms to simplify enrollment and increase awareness.

Globally, we will invest in women's entrepreneurship through our foreign assistance and in partnership with the private sector, including through impact and commercial investment, capacity building for women entrepreneurs, and increased opportunities to participate in trade and access markets. We will also create and promote opportunities to better and more equitably include women-owned businesses in supply chains and contracting, supporting programs that create opportunities for small and medium-sized enterprises.

We will also work with governments and financial institutions to close gender gaps in access to banking and financial services, such as credit and insurance, including by increasing access to national identification and supporting financing for digital infrastructure. Furthermore, we will support the collection of sex-disaggregated data, including individual- and household-level asset information, to better understand the ways that women and girls may be excluded within households. And we will work to strengthen women entrepreneurs' access to digital platforms and technologies.

Eliminate Gender-Based Violence

All people deserve to live free from the threat of gender-based violence. Gender-based violence undermines safety, health, well-being, economic potential, and human rights. In addition to the human cost to individuals across their lifespan, gender-based violence has direct and indirect costs for families, communities, and economies and impacts democratic governance, development, and public health. To prevent and respond to gender-based violence wherever it occurs—whether in people's homes, schools, workplaces, communities, or online—we must develop and strengthen national and global policies to end the scourge of gender-based violence; support survivors through comprehensive service provision; and increase prevention efforts.

Gender-based violence can take many forms, and it is rooted in structural gender inequalities and power imbalances. It includes the use or threat of physical violence and coercive control toward an intimate partner (including domestic and dating violence), sexual assault, and stalking. Gender-based violence also includes human trafficking, online abuse and harassment, child sexual abuse, and rape during armed conflict, including when used as a tactic of war. And it encompasses physical, sexual, psychological, and financial harm or suffering, threats of such acts, harassment, coercion, and arbitrary deprivation of liberty, in both public and private spaces.

Gender-based violence is endemic in our communities. In the United States, about one in four women and nearly one in ten men reported being impacted by sexual violence, physical violence,

and/or stalking by an intimate partner. Globally, one in three women across their lifetime are subjected to physical or sexual violence by an intimate partner or sexual violence from a non-partner.

Gender-based violence poses additional challenges for individuals from marginalized or underserved populations who experience intersecting forms of oppression, such as racism, homophobia, xenophobia, and economic exploitation, which affect their safety, well-being, and their ability to access support. In the United States, Native American women experience gender-based violence at higher rates, often perpetrated by individuals who are not Native American. Black transgender women face epidemic levels of violence, accounting for 66% of all victims of fatal violence against transgender and gender nonconforming people in the United States. Asian American and Native Hawaiian/Pacific Islander women and their families face heightened risk of gendered hate crimes, while people with disabilities face higher risks of domestic violence, sexual assault, and human trafficking.

As in the United States, women and girls across the world face heightened risk of abuse and exploitation, and these risks are higher for those from underserved and marginalized populations. The risk of gender-based violence is particularly high in conflict zones, where rape is often used as a tactic of war, and in the aftermath of natural disasters, as well as in humanitarian and refugee contexts, where women and girls face unique vulnerabilities.

Intimate partner violence and gun violence are a deadly combination in the United States, where nearly half of all female homicide victims are killed by a current or former male intimate partner and where nonfatal gun use leaves women especially at risk and furthers coercive control. Gender-based violence also has profound effects on the health and economic security of survivors and their families. It impacts women's safety and security in the workplace, especially when they have limited bargaining power and fewer contractual and other rights at work. Furthermore, risks of sexual abuse and exploitation, as well as human trafficking, are higher for low-wage workers, including restaurant and janitorial workers; migrant workers, including farmworkers; and those who work in conditions of isolation, including domestic workers and home health aides.

In addition to the long-term health and economic effects on survivors and their families, gender-based violence imposes significant costs to the economy and society overall, including costs related to health care, criminal justice, and lost productivity.

As a result of the courage and advocacy of survivors, who have led the way in movements for social change both in the United States and globally, important progress has been made over the past several decades to raise awareness and advance policies to address gender-based violence. However, greater focus is needed to address the scale of this challenge and combat its deleterious effects on health, safety, development, and economic growth, as well as the stability and security of countries around the world.

To reduce gender-based violence at home and abroad, we will:

a. Develop and Strengthen Comprehensive Policies to End Gender-Based Violence

The United States will create the first-ever U.S. National Action Plan to End Gender-Based Violence, establishing a comprehensive plan to prevent and address the root causes of these problems, as well as increase options and opportunities for survivors to seek safety, support, healing, and justice. This plan will have a particular focus on addressing the compounded systemic barriers of those most at risk, including women, girls, people of color, Indigenous people, immigrants, individuals with disabilities, older adults, individuals experiencing poverty, LGBTQI+ individuals, and members of other underserved communities.

To ensure a holistic approach for all survivors, we will work to reauthorize, strengthen, and improve implementation of federal legislation and policies to address gender-based violence. This includes the reauthorization and strengthening of the landmark Violence Against Women Act (VAWA), which has strengthened legal protections and civil remedies for survivors and has continued to expand protections and programs, particularly for those in underserved communities who face additional barriers to safety and justice. More reforms are necessary, through legislation and regulations, to ensure that survivors have a full range of options when seeking a pathway to safety, healing, and well-being, including increased access to essential services; effective criminal, civil, immigration, and restorative justice systems; implementation and expansion of common sense gun legislation to keep firearms out of the hands of adjudicated abusers; access to economic security and safe and affordable housing and transportation; adequate health care, mental health, and social services; and increased support for holistic prevention efforts.

We will aim to improve prevention initiatives and enhance trauma-informed responses domestically and globally to assist children and adolescents affected by sexual violence, as well as adult survivors of childhood sexual abuse, and expand access to healing and justice. Furthermore, we will improve policies to prevent and address sexual harassment, assault, and exploitation in the workplace and in educational settings, including by strengthening prevention and protections for the federal workforce and the military.

To address online abuse and harassment, domestically and globally, we will convene a U.S. Government task force and seek input from leading experts to produce recommendations for preventing and improving the response to technology-facilitated gender-based violence. These efforts will include a focus on addressing cyber stalking, the non-consensual distribution of intimate images, and the use of the internet as a tool of abuse to intimidate and silence women, including women politicians, journalists, and activists.

Globally, we will update and expand our 2016 U.S. Strategy to Prevent Gender-Based Violence Globally to address heightened challenges, including the rise in gender-based violence during the COVID-19 pandemic. We will also amplify efforts to prevent and respond to gender-based violence in conflict and crisis and in humanitarian contexts by better integrating prevention efforts and service provision into our standard humanitarian response, and bolstering accountability mechanisms for those responsible for gender-based violence. We will direct our resources to programs that are trauma-informed and survivor-centered and address the link between gender-based violence and political instability. We will also support the passage and implementation of stronger national laws and policies and international frameworks through our

bilateral and multilateral engagement. And we will elevate a focus on gender-based violence in our defense, diplomacy, and foreign assistance efforts.

b. Address Gender-Based Violence through Comprehensive Service Provision

To help close gaps in gender-based violence prevention and response efforts, including for members of underserved communities, we will seek to address the multifaceted and systemic barriers survivors face, including the need for economic security, safe and affordable housing, safe schools and workplaces, access to transportation, physical and mental health services, and legal representation.

We will work to improve the response of law enforcement and the criminal and civil legal system, as well as the immigration system, to ensure widespread knowledge of crime victims' rights, and address the harms that some survivors experience as a result of violence or discrimination by those with an obligation to protect or when seeking support from these systems. To expand options for survivors, we will support the development of restorative justice and other alternatives to a criminal justice system response that are survivor-centered and trauma informed. We will also increase support for diverse service providers, including culturally-specific community-based organizations, particularly those providing support for survivors from historically marginalized and underserved communities.

Globally, we will strengthen efforts to provide shelter, legal assistance, health care, including mental health care, livelihood training, and financial support for survivors of gender-based violence. We will also increase efforts to ensure that women are protected from violence and abuse in the workplace. To address heightened vulnerability to gender-based violence in crisis situations, we will ensure that comprehensive services are better integrated into disaster preparedness, humanitarian contexts, and conflict and post-conflict response, and work to expand bilateral and multilateral initiatives to provide such services to survivors from the onset of a crisis.

c. Increase Prevention Efforts to Reduce the Incidence of Gender-Based Violence

Abuse is preventable. Both at home and abroad, we will aim to evaluate and scale programs by promoting a wide range of culturally-relevant and trauma-informed programs that prevent gender-based violence. We will increase support for education for all students about safety, consent, and healthy relationships, including efforts to prevent online abuse and harassment. In the United States we will strengthen the enforcement of laws—such as Title IX, which prohibits sex discrimination in education, and the Clery Act, which requires disclosure of campus sexual assault, domestic violence, and stalking—to improve prevention and response policies at K-12 schools and institutions of higher education. We will also improve legislation and funding, such as through the reauthorization of the Family Violence Prevention and Services Act, to expand prevention initiatives. Furthermore, we will promote increased investment in research efforts focused on prevention, which are necessary to better understand root causes, create innovative models, and increase data collection and analysis to evaluate promising practices, including identifying and supporting approaches led by and focused on diverse populations. Additionally, we will incorporate lessons learned and best practices in responding to pandemics or natural disasters in order to reduce heightened risks of gender-based violence.

In the United States and globally, we will address social mores that normalize abusive behaviors and engage a broad array of partners in prevention efforts, including through programs that

engage men and boys to prevent gender-based violence. These efforts include undertaking research and evaluation to improve the development of holistic programs that aim to prevent further use of violence and increase accountability, as well as supporting trauma-informed approaches for those who have witnessed or experienced violence as children.

Protect, Improve, and Expand Access to Health Care, including Sexual and Reproductive Health Care

Health care is a right—not a privilege. All people deserve access to high-quality, affordable health care, regardless of their zip code, income, ethnicity, race, or any other factor. We will ensure equitable access to high-quality, affordable health care; protect the constitutional right to safe and legal abortion established in *Roe v. Wade* in the United States, while promoting access to sexual and reproductive health and rights both at home and abroad; close disparities in maternal health care and reduce maternal mortality; and provide comprehensive health care, including preventive and mental health and treatment services.

We are committed to building on the historic work of the Affordable Care Act (ACA) to advance women's and girls' health in the United States. The ACA has helped ensure fair access to comprehensive and affordable health coverage for millions of women and girls by ensuring more low-income women are eligible for no- or low-cost services through Medicaid; improving affordability and strengthening consumer protections, so that women with preexisting conditions are no longer denied or priced out of coverage; requiring coverage for essential benefits like contraception, cancer screenings, and maternity care; and, most importantly, ensuring that women are no longer discriminated against just for being women. Thanks to the ACA's coverage expansions, the uninsured rate for all women has dropped by 8 percentage points, with Black and Latina women seeing bigger drops at 10 and 17 percentage points, respectively. The ACA has also made coverage more affordable: fewer Black women, Latinas, as well as young women of all races, report delaying care as a result of cost.

We have expanded the ACA with the most substantial improvement in health care affordability since 2010 by temporarily lowering the cost of ACA Marketplace coverage and enabling nearly three million people to gain coverage. Over half of those who newly signed up for HealthCare.gov coverage during the Administration's 2021 Special Enrollment Period were women.

Globally, the COVID-19 pandemic has strained health systems across the world, resulting in a redirection of health resources to cope with the pandemic. Consequently, this crisis has reversed some recent health improvements and created new needs in maternal, neonatal, and child health, as well as sexual and reproductive health. Even before the pandemic, gaps in health systems and service provision undermined access to health care, including for conditions disproportionately faced by women and girls.

As part of expanding access to health care, we must protect and strengthen access to reproductive health care. Reproductive health and rights in the United States are under attack, in spite of the Supreme Court's recognition of the constitutional right to abortion in *Roe v. Wade* nearly fifty years ago. Over the past several decades, women in the United States have faced a growing number of obstacles to and restrictions on reproductive health care, including safe and legal abortion, which have disproportionately affected and harmed women of color and others in

underserved and historically marginalized communities. Most recently, Texas passed a state law that blatantly violates women's constitutional rights, as recognized under *Roe v. Wade* and upheld as precedent for nearly five decades, thereby eviscerating access to abortion in our nation's second largest state and threatening reproductive rights across the country. The Supreme Court is already poised this term to hear the greatest challenge to *Roe* in a generation, putting women's fundamental rights on the line.

Protecting and expanding access to health care also includes addressing the maternal mortality crisis at home and abroad. The United States has one of the highest maternal mortality rates relative to other developed nations, particularly among Black and Native American women, who are two to three times more likely to die from pregnancy-related complications than non-Hispanic white women, regardless of education level. Globally, even prior to the pandemic, more than 200 million women lacked access to modern methods of family planning, and access to sexual and reproductive health services has declined further during the COVID-19 outbreak. And while the global maternal mortality rate has fallen, almost 300,000 women and girls still die each year from largely preventable conditions related to pregnancy and childbirth; indeed, pregnancy and childbirth complications remain a leading cause of death among girls aged 15 to 19 years old.

The mental health consequences of the COVID-19 pandemic have also exacerbated pre-existing disparities. In the United States, the rate of visits of teenage girls to emergency rooms for self-harm, including suicide attempts, has risen 51%, and students who are most at risk of trauma related to the COVID-19 pandemic—disproportionately students of color—are more likely to be in schools that lack comprehensive mental health services. Social media, bullying, sexual harassment and abuse, and domestic violence also impact mental health, which in turn undermines physical health, behavioral health, physical health, and the educational prospects of those disproportionately affected, including girls, young women, and LGBTQI+ youth at home and abroad.

To expand access to health care and address pervasive health inequities, we will:

a. Ensure Equitable Access to High-Quality, Affordable Health Care

Access to health care is essential for the full participation of women and girls in the economy and society. We are committed to protecting and building on the successes of the ACA to expand access, lower costs, and ensure that quality, affordable health care is available to all. This includes closing the Medicaid coverage gap so low-income women can get and stay covered, lowering health insurance premiums for ACA coverage, improving access to dental, hearing, and vision coverage for older adults, and taking concrete steps to lower prescription drug costs. We also need to invest in research and innovation, focus on closing stark and long-standing inequities that women, particularly women of color, face, and address the systemic racism that has allowed many of these inequities to persist.

We will also address systemic bias and racism in health care provision. These efforts include robust implementation of Section 1557 of the ACA, which prohibits discrimination on the basis of sex (including sexual orientation and gender identity), race, national origin, disability, or age in various health programs or activities that receive federal funds.

Globally, we remain committed to expanding access to care for women, girls, and other underserved communities around the world. We will continue to promote equitable access to

health care through continued investments in the provision of health services, especially for underserved populations. This includes ensuring that COVID-19 prevention and treatment reaches women, girls, and other vulnerable and marginalized groups. It also includes health systems strengthening in order to support the provision of appropriate and adequate care for people of all genders.

In our global health work, we will also address sociocultural factors that compromise access to care for women and girls, rendering them more vulnerable to HIV/AIDS, unattended births, and other poor health outcomes—including by engaging men and boys as partners in addressing gender inequities in health. And we will work with host and donor governments to advance the critical role of women in the global health workforce, especially in light of their disproportionate contributions during COVID-19, and address the barriers they face to career advancement, including pay inequity, harassment, and other factors.

b. Protect and Defend the Constitutional Right in Roe v. Wade and Promote Access to Sexual and Reproductive Health and Rights

Sexual and reproductive health, rights, and justice in the United States are under grave attack. We will use all available levers to protect these rights, and we will work to codify the constitutional rights recognized under *Roe v. Wade* for nearly half a century. To secure access to high-quality reproductive health care, we will seek to break down discriminatory barriers that inhibit reproductive freedom, such as those based on gender, sexual orientation, gender identity, race, income, disability, geography, and other factors. That includes supporting the repeal of the Hyde Amendment, because health care should not depend on a person's income or zip code. We will strengthen access to the full range of family planning services by restoring and expanding the Title X program, our nation's only family planning program. We will also strengthen people's ability to receive the high-quality, comprehensive care they need from the reproductive health care provider of their choice, regardless of the health care program. Furthermore, we will support medically-accurate, inclusive, age-appropriate sex education, including to prevent sexually transmitted infections. These efforts will reduce teen and unintended pregnancies, improve maternal and infant health outcomes, and reduce the rate of sexually transmitted infectious diseases. At home and abroad, we will explore ways to increase access to affordable and safe hygiene products, which are financially out of reach to many, especially girls.

Globally, we will seek to end the harmful Global Gag Rule that restricts women's access to critical health information and services. We are proud to remain the largest bilateral donor to global family planning assistance, a commitment spanning more than five decades, and we commit to investing in high-quality, client-centered sexual and reproductive health services that improve women's wellbeing, promote gender equality, and give women greater control over their bodies and lives. We will continue to support the United Nations Population Fund, which provides vital family planning and maternal health services around the world. We will also ensure better integration of sexual and reproductive health service provision in global contexts, including in humanitarian and post-conflict settings. Furthermore, we will restore U.S. global leadership on sexual and reproductive rights and comprehensive sex education, in bilateral and multilateral fora and in efforts to advance universal health care coverage globally.

c. Close Disparities in Maternal Health Care and Reduce Maternal Mortality

In the 21st century, no one in the United States should die due to preventable conditions related to pregnancy and childbirth. To address our nation's maternal health crisis, we will take a whole-

of-government approach to cutting the maternal mortality and morbidity rates, closing racial disparities, and addressing the systemic racism that has allowed these inequities to exist in maternal care and outcomes. Our maternal health strategy will advance the expansion of Medicaid post-partum coverage to a full year, invest in rural maternal health efforts, and tackle health disparities head on, including through better data collection and reporting, improved training for providers (including implicit bias training), and diversifying the perinatal workforce.

Globally, we will continue investments to advance the Sustainable Development Goals and the Global Strategy for Women's, Children's, and Adolescents' Health. This includes a commitment to invest in safe, respectful, and client-centered maternal and child health services to address the major causes of maternal mortality and morbidity, with a focus on countries that account for more than two-thirds of maternal and child deaths worldwide, including conflict- and crisis-affected settings. We will also strengthen health systems to ensure that all births are attended by health professionals who have access to basic emergency obstetric care and ensure that all women and girls have access to high-quality, integrated sexual and reproductive health services.

d. Provide Comprehensive Health Services, Including Preventive Services and Mental Health

We will ensure that people of all genders get comprehensive services in order to stay healthy. This includes preventive services, ranging from cholesterol and blood pressure screenings to mammograms and cervical cancer screenings, among others. We are also committed to expanding health insurance coverage so more people have access to mental health services; enforcement of mental health parity laws; and access to providers who can provide compassionate, trauma-informed, culturally competent services. To address the rise in youth mental health issues during the pandemic, we will seek to double the number of mental health professionals in our schools, prioritizing expanding services in high-poverty schools. We will also invest in maternal mental health care and substance use disorder prevention, treatment, harm reduction, and recovery support. This includes addressing gaps in access to postpartum mental health and substance use care for women of color and rural women, among others.

To ensure comprehensive care for women, we need to reduce health disparities in research, prevention, and treatment of diseases historically associated with women—such as breast and cervical cancer—as well as other health issues that are leading causes of death for women but often overlooked, such as heart disease and stroke. This includes investing in research that explores the specific needs of women of color and the social determinants of health that often contribute to racial, ethnic, and other disparities, such as those that make Black women disproportionately impacted by uterine fibroids, more likely to die of breast cancer, more susceptible to heart disease than white women, and more likely to be diagnosed with HIV; and that lead to higher rates of gestational diabetes for Latinas, who are also 17 times more likely to die from diabetes than non-Hispanic white women.

Across the world, we will support integrated health services through our global health programs—including comprehensive women's health care services—and promote co-location of services to improve health outcomes. We will also work with partners and allies to advance the provision of culturally sensitive, trauma-informed, comprehensive health services, including for mental health and wellness, particularly in the wake of COVID-19. This includes focusing on the social determinants of health that fuel disparities in underserved and marginalized communities.

Ensure Equal Opportunity and Equity in Education

Access to quality education is fundamental to gender equity and equality. Yet here at home and around the world, too many people continue to face barriers to education that undermine their full potential and ability to compete on a level playing field, which have been exacerbated by the COVID-19 pandemic. We will promote equitable access to education from early childhood through employment; enact reforms to eliminate discriminatory practices and other barriers; and strengthen Title IX protections and other policies governing the response to gender-based violence, assault, and sexual harassment in education.

In the United States, girls—particularly girls of color, girls who are English Learners, girls with disabilities, and LGBTQI+ youth—face unique challenges in school. For example, Black girls experience disproportionate rates of school discipline—often for discriminatory dress-code and hair violations—and criminalization. Black girls and other girls of color, girls with disabilities, and LGBTQI+ youth are overrepresented in school-based arrests that foster a school-to-prison pipeline, among other harmful outcomes.

While women have made substantial progress in rates of enrollment in postsecondary education and represent a majority of college students, they hold two-thirds of the nation's student debt, with Black women holding a disproportionate share of this debt. Furthermore, women and girls still do not enjoy equal opportunity and resources in education and leadership, including in athletics, and their access is further constrained by sexual assault and harassment, and other forms of gender-based violence.

Globally, over 132 million girls are out of school, and a persistent gender gap in secondary education leaves girls without basic literacy and numeracy skills, at risk of child, early, and forced marriage, and with limited economic opportunities. Additionally, girls and young women experience high rates of sexual abuse and sexual harassment in educational settings or on their way to school, often perpetrated with impunity by peers as well as by educators and those in other positions of authority. Concerns about safety, harassment and abuse, menstrual hygiene, and unintended pregnancy undermine access to education, and girls in conflict and humanitarian situations are 2.5 times more likely than boys to be out of school. Even when girls are in school, the quality of schooling is often insufficient to impart basic literacy and numeracy skills. The COVID-19 pandemic has exacerbated these gaps, disrupting schooling for an entire generation of girls, who are more likely than boys to have been forced out of school, lacked access to remote learning options, and taken on caregiving responsibilities.

Closing gender gaps in education is critical to boosting health, economic growth, and stability at home and abroad. To further this imperative, we will:

a. Promote Equitable Access to Education from Early Childhood through Employment

We will promote equitable access to quality educational opportunities, from early childhood education through job training and employment. We will pursue high-quality preschool for three- and four-year-olds to ensure that children of every background are entitled to the strongest possible start. We will also invest in making college affordable for low- and middle-income students, including at community colleges, Historically Black Colleges and Universities, Tribal Colleges and Universities, and minority-serving institutions, which will help close gender, racial, ethnic, and socioeconomic opportunity gaps.

To promote equity in education in the United States—particularly in our public school system where 53% of students are students of color— we will make historic investments in high-poverty Title I schools to close gaps in access to rigorous coursework, increase educator compensation, and provide incentives for states to address inequitable school funding systems; strengthen pipelines for underrepresented educators to improve the diversity of the workforce; and expand college and career pathways for middle and high school students. We will also work towards our goal of doubling the number of school counselors, social workers, psychologists, and nurses and expanding federal funding for community schools that provide wraparound supports for students and their families.

We will provide opportunities to pursue STEM careers and develop pathways to access training and career opportunities. We will also address the ways in which the lack of affordable housing and transportation creates barriers to quality education.

Globally, we will work with partners and allies to promote early childhood development and universal pre-primary education. We will prioritize efforts to close gender gaps in secondary education, ensuring that girls gain core literacy and numeracy skills in school, which will in turn advance health and economic development around the world. We will also promote workforce development, mentorship, job training, and foundational leadership skills for women and girls.

b. Enact Reforms to Eliminate Discriminatory Practices and Other Barriers in Education

We will support school discipline reform at all levels of education to promote safe, inclusive, and trauma-informed learning environments for all students, including Black girls and other girls of color, girls with disabilities, and LGBTQI+ youth. This includes collecting comprehensive, disaggregated data on school disciplinary outcomes across the United States and highlighting best practices for implementing trauma-informed, culturally-responsive approaches to school discipline. We will also work to fund evidence-based approaches to meet the social, emotional, academic, and career needs of students of all genders and identities, including culturally-responsive counseling and mental health services.

Globally, we will support initiatives that incentivize girls' and women's access to learning and disincentivize child, early, and forced marriage, including safe learning environments, increased representation of women in educational leadership roles, implementation of strategies to mitigate financial barriers, school-based health and nutritional support, and behavior change communication programs. We will address school-related gender-based violence and leverage our multilateral investments to advance girls' secondary education, including in conflict, crisis, and humanitarian contexts, and address barriers such as cost, distance, and poor-quality education. We will also ensure that COVID-19 relief strategies address these persistent barriers to girls' education, including unpaid work.

c. Strengthen Title IX Protections and Policies Governing Response to Gender-Based Violence, Assault, and Sexual Harassment

To promote equity and equal opportunity in education, we will support policies that ensure an educational environment free from discrimination—including sexual harassment and abuse—on the basis of sex, sexual orientation, or gender identity.

In the United States, we will continue to review and strengthen regulations and guidance implementing the Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs or activities, including in the form of

gender-based and sexual harassment. This includes ensuring that women and girls are not discriminated against in accessing educational opportunities, from admissions and financial aid to leadership opportunities and sports. We have also already taken swift action to extend those protections to LGBTQI+ students, in keeping with the Supreme Court's decision in *Bostock v. Clayton.* We will promote equitable access to sports and school facilities for all student athletes; support athletics participation by girls, who currently participate at much lower levels than boys in elementary and secondary school sports; and promote respect for the gender identity of all students, faculty, and staff.

We will improve the response to sexual assault, sexual harassment, and other gender-based violence in early childhood, K-12, and postsecondary education, including supporting trauma-informed training for school employees to reduce re-victimizing students during the response process. We will strengthen enforcement of the Clery Act, which requires disclosure of campus sexual assault, domestic violence, and stalking. We will also support educational programs for students, faculty, and administrators on sexual harassment, assault, and consent, including bystander intervention training and other prevention initiatives.

Globally, we will work with governments and multilateral partners to encourage reform to laws and policies governing sexual harassment and abuse in education, improve the safety of transportation to and from schools, and invest in global and local women's organizations working to reduce barriers to girls' education, including sexual harassment and abuse.

Promote Gender Equity and Fairness in Justice and Immigration Systems

Fair treatment in justice systems and immigration systems is essential to advancing gender equity and equality. However, the unique needs of women, girls and gender nonconforming people are frequently overlooked in both systems.

Women and girls from underserved populations remain overrepresented in our criminal and juvenile justice systems: 62% of incarcerated or confined girls are girls of color, over half of whom are Black girls. Forty percent of detained girls nationally identify as lesbian, bisexual, questioning, gender nonconforming, or transgender. Women and girls who are sexually assaulted too often lack adequate redress and often are retraumatized when seeking help from criminal justice systems. Women and girls of color—particularly Black women and girls—also represent a disproportionate share of police arrests and police violence. And the disproportionate incarceration of Black, Latino, and American Indian/Alaskan Native men and boys exacerbates trauma, economic insecurity, and other inequities in communities of color.

Immigrant women also deserve access to justice, both in our immigration systems and in our justice systems, where they face additional obstacles to accessing safety and security. They are also significantly less likely to have health insurance coverage, and women in detention can face major barriers to accessing health care, including sexual and reproductive care.

To advance justice for women, girls, and gender nonconforming people, we will:

a. Ensure Fair Treatment for Women and Girls in Justice Systems

To build safe, healthy, and whole families and communities, we will work to reform our criminal justice system, including by reducing the number of people incarcerated in the United States and

addressing the racial, gender, and income-based disparities in the justice system, as well as supporting efforts to increase community trust in police. We are also committed to increasing federal oversight and accountability for police departments and prosecutors' offices to address systemic misconduct, including gender bias and sexual misconduct. And we will work to end cash bail and reform our pretrial system, recognizing the harm these processes cause, particularly for Black women and families.

We will expand trauma-informed social services for women and girls in the criminal and juvenile justice systems who are struggling to cope with trauma, substance use disorders, and behavioral health disorders. We will ensure that incarcerated women, girls, LGBTQI+ individuals, and those formerly incarcerated receive health care, education and training, jobs, housing and other supports to reduce reincarceration and help them successfully rejoin society. We will also support programs and incentives to reduce the incarcerated youth population by promoting community-based alternatives to incarceration such as mentorship, counseling, and jobs.

We will reduce vulnerabilities to abuse and exploitation by strengthening services for girls and gender nonconforming youth in the child welfare system and support their transition to independence. Furthermore, we will provide access to legal services and assist victims of gender-based violence and human trafficking whose non-violent convictions resulted from their victimization.

Globally, we will promote fair, equitable, and inclusive justice systems. We will strive to increase women's access to justice, including redress and protection related to gender-based violence and access to legal representation. We will work with partners and allies to encourage reform of discriminatory standards across justice systems, including gender bias in law enforcement. And we will work with post-conflict nations to ensure that transitional justice systems address gender equality issues and promote accountability for crimes against women and girls.

b. Advance Gender Equity in the Immigration System

We will work to support a fair and humane immigration system in the United States that welcomes immigrants, keeps families together, and allows people—both newly arrived and those who have lived here for generations—to more fully participate in our country. We will enact policies to reduce vulnerability to abuse and exploitation faced by immigrants and noncitizens, especially women, girls and LGBTQI+ individuals, and increase their ability to seek safety and justice. We will support improved pathways to safety, including asylum and humanitarian relief, for those fleeing persecution, including as appropriate, on the basis of membership in a gender-based group—such as victims of gender-based violence—consistent with our international obligations, with a particular focus on crisis contexts. We will also seek timely adjudication of immigration petitions for survivors of domestic violence, sexual assault, and human trafficking, and other crimes.

We will seek to eliminate barriers that prevent immigrants from accessing government-funded services or obtaining the assistance of law enforcement, and will advance the language access rights of individuals with limited English proficiency. We will promote education programs so that immigrant populations are aware of their rights, including labor rights and protections, to reduce vulnerability to exploitation. We will also support humane and trauma-informed practices at the U.S. border and promote alternatives to detention, including for vulnerable

populations—particularly for those who are LGBTQI+ and individuals who are pregnant, postpartum, or nursing.

Advance Human Rights and Gender Equality Under the Law

In 1995, the United States led a historic delegation to the UN Fourth World Conference on Women, where then-First Lady Hillary Rodham Clinton declared that "women's rights are human rights." Just over 25 years later, our efforts to restore and strengthen American leadership on women's human rights globally are an extension of our commitment to advance human rights and gender equality here at home. We will promote gender equality under the law; prevent and address human rights violations and abuses; and combat human trafficking.

Gender equity and equality under the law at home and across the globe is a precondition to women's full participation in economic, political, social and cultural life. While the United States has laws to prevent violations of civil rights, women, girls and LGBTQI+ people still face discrimination, and the U.S. Constitution lacks language expressly enshrining equal rights regardless of gender. Globally, 100 nations still have laws on the books that inhibit women's workplace participation, freedom of movement, and equality, and in too many countries discrimination against women and girls is legal. Fewer than half of countries worldwide have laws prohibiting gender discrimination in compensation, and 58% of countries lack laws that explicitly criminalize marital rape. On average, women around the world are entitled to only three quarters of the rights that men enjoy—and in many nations, far less than that.

Additionally, human rights abuses against women and girls persist at home and abroad, undermining security across the globe. Millions of women and girls remain at risk of female genital mutilation/cutting (FGM/C) and child, early and forced marriage, forms of gender-based violence that undermine security and human rights, including here in the United States. Other violations of women's human rights and abuses—from the right to travel freely to the opportunity to attend school—are linked to instability of entire nations. And human rights violations and abuses against particular populations—such as the crisis of missing and murdered Indigenous people, fueled in part by high rates of violence against Indigenous women and girls— undermine the safety and dignity of marginalized communities and detract from overall security and the rule of law.

Furthermore, human trafficking—a major security, human rights, and civil rights issue—fuels criminal networks and affects some of the most vulnerable members of our society. Every year, millions of women, men, LGBTQI+ individuals, and children, particularly homeless youth and children in the welfare system, endure suffering at the hands of human traffickers who exploit them for compelled labor, services, or commercial sex, depriving them of their rights and freedoms. Human trafficking undermines civil rights, national security, and the rule of law at home and abroad. Though human trafficking is known to be significantly underreported, 11,500 situations of human trafficking were identified in the United States in 2019, while of the estimated 25 million victims of human trafficking globally, nearly three quarters are women and girls.

To advance human rights and gender equality under the law, we will:

a. Promote Gender Equality Under the Law

To promote the civil rights and full participation of women across economic, political, and social life, we will pursue reform to secure full gender equality under the law. Domestically, we will continue to support legislation that would prohibit discrimination on the basis of sex, sexual orientation, and gender identity in employment, housing, and public accommodations, among other sectors. We will also continue to support the Equal Rights Amendment, which would make gender equality explicit in the U.S. Constitution, as well as the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, a critical tool to advance women's rights around the world.

Globally, we will marshal diplomacy and foreign assistance to promote reform of national and sub-national laws that discriminate on the basis of sex, sexual orientation, and gender identity, including in the areas of work, property ownership and inheritance, freedom of movement, family law, and health care, among others. This includes supporting country-level reforms that ensure equal rights and opportunities under the law for women and girls.

b. Prevent and Address Human Rights Violations

We have already taken steps to demonstrate renewed U.S. leadership in support of gender equality and human rights on the world stage. At the United Nations Generation Equality Forum, Vice President Harris announced an historic U.S. commitment of over $12 billion dollars to advance gender equality here at home and across the globe. We will continue to elevate a focus on gender equality and human rights in domestic and foreign policy.

In the United States, we will collaborate with state officials to prevent and address harmful practices that undermine human rights, including laws that permit child, early and forced marriage, as well as the practice of FGM/C among diaspora communities, and ensure access to social services for those harmed. We will also combat human rights violations and abuses against underserved groups, including by addressing the scourge of missing and murdered Indigenous people. This includes preventing and addressing sexual violence, human trafficking, domestic violence, violent crime, systemic racism, and economic disparities, among other factors, and supporting increased resources and programs for Tribal communities to prevent and address gender-based violence and other harms. And we will work to advance the rights of and protections for Indigenous women and girls globally, including through the Trilateral Working Group on Violence Against Indigenous Women and Girls in coordination with Mexico and Canada.

Around the world, we will work with a broad array of leaders to promote programs that address harmful practices that undermine human rights, health, and economic growth, including child, early and forced marriage, and FGM/C, among other practices. We will also address the constellation of human rights violations and abuses—including those restrictions on work, education, and freedom of movement, as well as attacks on political leaders—that constrain opportunities for women and girls. This work will include marshalling our diplomacy to support legal reform and providing foreign assistance to support a wide array of objectives, including behavior change educational programs; economic empowerment programs for women and girls; and supporting documentation of, and advocacy against, violence and human rights violations and abuses targeting women, girls and marginalized populations. We will also collaborate to address these issues in multilateral fora and on the world stage.

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c. Combat Human Trafficking

To combat human trafficking at home and abroad, we will implement the U.S. National Action Plan to Combat Human Trafficking; fund domestic and international anti-trafficking programs focused on prevention, protection, and prosecution; and work with partners to uphold national and global anti-trafficking standards.

Human trafficking disproportionately affects women and girls, people of color, LGBTQI+ individuals, persons with disabilities, vulnerable migrants, and other underserved individuals. Thus, our commitment to combating human trafficking is intertwined with our commitment to advancing equity, with a particular focus on members of underserved communities who are adversely impacted by gender, racial and ethnic discrimination and bias, and other disparities that increase their vulnerability to exploitation, abuse, and human trafficking. Accordingly, we will strengthen implementation of the U.S National Action Plan to Combat Human Trafficking.

We will also strengthen implementation of the Trafficking Victims Protection Act and amplify efforts to identify trafficking victims, provide survivor services, and apprehend and prosecute human traffickers within our borders and around the world, including increasing efforts to combat transnational human trafficking networks. We will take steps to increase accountability in the private sector to ensure supply chains free from forced labor and incentivize the financial sector to take action to help identify and seize illegal profits. We will amplify prevention efforts through sustainable development programs that address the root causes of and vulnerability to human trafficking and address the criminalization of victims of trafficking—disproportionately women and girls of color—in our justice system.

We will work across the federal government to renew and strengthen efforts to improve protections against trafficking in persons through federal contracting and grant assistance. We will implement trauma-informed training programs for workers, such as transit and train workers who disproportionately interact with trafficking victims, as well as educators, to be able to better identify trafficking victims for help and support. And we will support the development of data and research to identify the communities and geographic regions where trafficking occurs to better target our enforcement and prevention efforts.

Elevate Gender Equality in Security and Humanitarian Relief

A growing body of evidence confirms that the status of women is correlated with the security of nations—and countries that violate women's and girls' rights are more likely to be unstable. In addition, research shows that women's inclusion in matters of peace and security advances stability. To elevate gender equality in security and humanitarian relief efforts, we will: promote gender parity and gender equality issues in security processes; ensure gender equity in humanitarian relief and refugee resettlement efforts; and include gender in efforts to prevent terrorism.

Women's involvement in military and police forces improves efficacy and force readiness, while their participation in peace negotiations makes it more likely that warring parties will reach sustainable agreements. Despite these clear benefits, women and women's rights issues are consistently excluded from peace processes and the security sector, with women constituting on

average only six percent of mediators and signatories in major peace negotiations over the last 30 years.

Too often, the security sector overlooks the challenges faced by women, girls, and gender nonconforming people. In the United States, there is much work to be done in our military to ensure the representation of women and LGBTQI+ individuals, and prevent and address sexual violence and discrimination. Strategies to prevent terrorism overlook the role of women as perpetrators, mitigators, and victims, even as extremist groups recruit women and benefit from their subjugation across the globe, and despite the link between misogyny and domestic extremism. Across conflict and crisis affected contexts, protection for women human rights defenders, whose participation is critical to stability and security, is too often overlooked.

Furthermore, humanitarian relief efforts continue to overlook the needs of women and girls, including protection from gender-based violence and equitable access to services. In addition, women-led organizations are too often excluded from humanitarian decision-making and response.

In regions across the world, we can see both the consequences that violations and abuses of women's rights have had on women and society at large, as well as the need for their inclusion in peace and security processes. Rectifying the exclusion of women and girls in peace and security efforts is not only a matter of fairness—it is a strategic imperative that will improve stability both at home and abroad. To increase our safety and elevate gender equality in the peace, security, and humanitarian sectors, we will:

a. Promote Gender Parity and Gender Equality Issues in Security Processes

To strengthen peace and security efforts in the United States, we will enact reforms to improve gender integration in the uniformed services and foster the recruitment, promotion, and retention of women, which is a critical step for force readiness, military effectiveness, and national security. This includes removing the prosecution of sexual assault, and the investigation of sexual harassment, from the chain of command, as well as creating specialized units to handle these cases and related crimes. We are also committed to improving prevention and response programs to support survivors, and fully realizing a military climate of dignity and respect. We will promote reforms to ensure equal opportunity and anti-discrimination in the military, including through promotion of a diverse pool of candidates for senior leadership, equitable workplace policies, and comprehensive support services for women veterans.

Globally, we will amplify our whole-of-government implementation of the U.S. Women, Peace, and Security Act. This strategy focuses internally on dedicated staffing, funding, training, and accountability requirements, as well as on policies and programs to advance women's meaningful participation and leadership in conflict prevention, peace, security, and political processes. We will use our diplomacy and leverage in bilateral and multilateral fora to promote inclusive diplomacy, foreign assistance, inclusive security processes and the prioritization of women's rights issues in conflict resolution and post-conflict reconstruction efforts. We will support the leadership of local women-led civil society organizations working to advance more inclusive peace and security agendas.

b. Ensure Gender Equity in Humanitarian Relief and Refugee Resettlement Efforts

We will continue to work with and support other governments, multilateral partners, and nongovernmental organizations to advance gender equity in humanitarian relief and the

protection of women and girls in emergencies. We will also strengthen our humanitarian response by amplifying our focus on gender equality, leveraging our role as the largest bilateral humanitarian donor to help ensure progress and accountability on these issues across the humanitarian system. This includes ensuring prevention and response to gender-based violence at the outset of an emergency, including harmful practices like child marriage; the provision of comprehensive sexual and reproductive health services; access to girls' education, which is threatened in emergency situations; and women's access to safe and accessible livelihood opportunities. We will support the critical role of women-led organizations as first responders and to inform the policies and programs of the humanitarian system. We will also ensure that our refugee resettlement processes respond to the unique needs of and offer comprehensive services to women and girls.

c. Include Gender in Efforts to Counter Violent Extremism

To strengthen efforts to prevent terrorism and targeted violence at home and abroad, we will include women in prevention efforts, recognizing that women are well-positioned to lead efforts to spot and address radicalization and mobilization to such violence in their communities. We will also address the rising role of women in violent extremist activity, both as perpetrators and as victims. To better gather information about women and violent extremism, the Director of National Intelligence will designate a National Intelligence Officer for Gender Equality, who, among other responsibilities, will help analyze the interrelationship between gender and violent extremism. We will also increase the recruitment of women in the security sector to strengthen our efforts to mitigate against terrorist threats at home and abroad.

Promote Gender Equity in Mitigating and Responding to Climate Change

Tackling the climate crisis requires ambition, innovation, and broad mobilization and will depend on the commitment and participation of all people. But gender-based discrimination and exclusion in climate policy decision-making at all levels of government currently inhibit progress on a full range of solutions to address climate change and associated threats, such as extreme weather and disasters, natural resource depletion, and growing instability that puts the homes, livelihoods, and security of millions of people at risk. To promote gender equity in mitigating and responding to climate change, we will pursue gender parity in climate negotiations and climate science; support an inclusive clean energy economy; and address gendered public health effects related to climate change.

Climate change presents unique threats to women, girls, and other underserved populations. The health impact of climate change includes increased risks posed by extreme heat, air pollution, and infectious disease exposure, with disproportionate impacts on pregnant women. These effects can be more acute for Black, Indigenous, and other people of color, who are more likely to live in communities where legacies of pollution and underinvestment have created health disparities compounded by climate change. In many contexts, women and girls are also disproportionately harmed by food insecurity, water scarcity, and extreme weather and disasters, the frequency and intensity of which are exacerbated by climate change. Climate-related disasters hinder access to essential services, including sexual and reproductive health care, and women are less likely to have pre-disaster emergency savings compared to men. Left

unchecked, climate change would also further entrench global patterns of inequality: resource competition and forced migration are linked to increased rates of gender-based violence, and economic and social upheaval can hinder progress on human rights.

Although women and girls have been some of the most vocal advocates in support of environmental stewardship, they remain dramatically underrepresented in leadership positions in climate change negotiations in the United States and across the globe. Women and girls are often on the frontlines of climate adaptation, responding to changing conditions that affect food production, water availability, and household safety. Climate change mitigation also requires their increased participation to decarbonize every sector of our economy and foster more sustainable societies.

To meet this challenge, people of all genders must be fully empowered as leaders in government, the private sector, and civil society, as well as community and household decision-makers who can promote sustainable food, transportation, energy, and procurement choices. They should play critical leadership roles in advancing climate goals at all levels of government, including by conducting environmental and climate science, incorporating Indigenous and traditional knowledge into climate mitigation and adaptation strategies, leading climate-linked disaster response, preserving biodiversity, and advancing environmental conservation efforts.

To further this imperative, we will:

a. Pursue Gender Parity in Climate Negotiations and Climate Science

Both in the United States and on the world stage, we will seek to increase diverse representation in climate negotiations, diplomacy, policymaking, and the climate science field, working towards the goal of gender parity.

As part of promoting women and girls' education and training in science, technology, engineering, and mathematics (STEM) fields, we will include a focus on climate science, helping to ensure a deep and diverse bench of experts to achieve gender parity in the climate science community and to develop gender-responsive climate change planning and policy, ecological health strategies, and conservation strategies. We will also support broadening women's inclusion in the development of their communities' environmental protection plans and climate ambition strategies. These efforts will highlight the role of women in conserving land, water, and biodiversity—including the critical contributions of Indigenous knowledge—and in deploying climate mitigation and adaptation strategies in their communities.

b. Support an Inclusive Clean Energy Economy

Responding to the climate crisis will create new jobs and stimulate new industries. Women and members of other underserved communities should have access to these opportunities, and the sustainable infrastructure and clean energy economy must take steps to promote inclusion and counteract gender discrimination and bias. We will invest in leadership training for girls and women to promote their participation in clean energy, clean transportation, energy efficiency, natural climate solutions, ecosystem restoration, and other climate-related fields. We will also support investment in climate innovation and social entrepreneurship and promote accessible climate financing to a diverse range of groups, including youth-led and women-led grassroots organizations.

Globally, we will support the inclusion of gender in environmental assessments of infrastructure financed through foreign assistance, including by measuring the impact on women and girls in communities served by a particular infrastructure project; ensuring that project development and implementation efforts respond to the unique needs of women and girls as well as other underserved communities; and affirmatively creating gender-equitable employment and leadership opportunities. We will also support climate-resilient infrastructure projects that directly advance gender equality, including health infrastructure to address maternal mortality and morbidity, as well as digital infrastructure expressly aimed at closing the digital gender gap in low- and middle-income countries, which hinders women's economic and civic participation and access to financial and social services.

As we navigate the shift to clean technologies and industries, we will ensure that women have access to the jobs of the future, providing training pipelines and career pathways to ensure equitable workforce opportunities. Doing so will involve inclusive expansions of fields where women are currently underrepresented, including clean energy manufacturing and deployment, as well as continued support for fields where women are well-represented—such as health care and education—that are critical to reaching a net-zero future. And we will support women's roles in the transformative, climate-related shifts in agricultural production and labor worldwide, including their leadership in climate-resilient agriculture strategies.

c. Address Gendered Public Health Effects Related to Climate Change

Our domestic and international public health investments will be responsive to the disproportionate health impact of climate change on underserved populations.

Domestically, we will identify communities facing disproportionate risks from climate and environmental hazards and address the resulting health disparities and underlying vulnerabilities. Through our Administration's Justice40 Initiative, we are working to deliver at least 40% of the overall benefits from federal investments in climate and clean energy to disadvantaged communities and developing a Climate and Economic Justice Screening Tool to inform these efforts. As part of this commitment to environmental justice and equitable health outcomes, we will respond to the impact of legacy pollution, which disproportionately burdens low-income communities and communities of color and poses environmental health risks. Further, we acknowledge the unique needs of communities located near industrial facilities that produce pollution, traffic, odor, or noise, and we will work to ensure climate change mitigation efforts do not create additional pollution burdens in communities already disproportionately exposed to environmental hazards. Throughout this work, we will address gender disparities and empower women and girls to build community health resilience.

Globally, we will provide financial and technical assistance to protect women, girls and their communities from climate-related threats, including by integrating climate and gender considerations into efforts on health systems strengthening and global health security; disaster preparedness and response; food and nutrition security; water, sanitation, and hygiene; and gender-based violence prevention and response. Our foreign policy and foreign assistance will also respond to the instability, conflict, and displacement exacerbated by climate change. In ongoing efforts to respond to migration resulting directly or indirectly from climate change—including forced migration, internal displacement, and planned relocation—the options identified for protection and resettlement of displaced individuals will account for the unique needs of

women and girls, who are disproportionately likely to migrate and to be vulnerable when doing so.

Close Gender Gaps in Science, Technology, Engineering, and Mathematics Fields

For many women and girls, the ability to lead the charge against 21st century challenges like climate change and compete in the workforce of the future starts in school—and continues in the workplace. The exclusion and structural barriers that fuel the underrepresentation of women and girls in STEM fields, especially women and girls of color, continue to undermine their access to lucrative jobs that are growing in importance in our modern world, a gap that risks disadvantaging another generation of girls and women at home and abroad.

This gender gap robs nations of critically needed STEM solutions. It also excludes the voices and needs of women and girls from the development and governance of modern tools like the internet and artificial intelligence, putting them at a disadvantage in the workforce. To help close this gender gap and advance gender equity and equality through STEM, we will promote equity, access, and nondiscrimination in STEM fields; improve gender equity in access to technology; and encourage STEM innovation and entrepreneurship.

Closing gender gaps in STEM fields is critical to advancing gender equity and equality, promoting innovation, and bringing the talents and resources of people of all genders to bear in finding answers to the challenges that will shape our future. Advancing gender equity and equality through STEM also requires that we address its intersection with other fields including the arts (STEAM), design, medicine and biomedical research, entrepreneurship, and other fields that drive innovation.

To advance gender equity and equality through STEM, we will:

a. Promote Equity, Access, and Nondiscrimination in STEM Fields

To advance equity, access, and nondiscrimination in STEM fields in the United States, we will incentivize efforts to provide culturally relevant science and technology education for all students, boosting opportunity for girls and people of color who are currently underrepresented. We will also invest in opportunities to create new career pathways for women in high-wage STEM fields, starting in middle and high schools, prioritizing increased access to computer science and high-quality career and technical programs that connect women to in-demand sectors, including employment in new clean energy economy jobs. These investments would also promote equity in access to good-paying jobs and increase economic security, diversify the workforce, help revitalize U.S. manufacturing, and promote basic and applied research and development.

To promote equitable STEM learning and work environments, we will pursue interventions that shift the culture of STEM to reduce bias, harassment, and discrimination. We will also promote flexibility in STEM careers to better accommodate life events including illness and caretaking responsibilities, which have exacerbated the gender gap in STEM fields during the COVID-19 pandemic.

Globally, we will invest in STEM education and training for women and girls through foreign assistance, investments in research and development, and education exchanges. We will also

support programs that aim to eliminate barriers to women and girls in STEM fields, including behavior change communication programs.

b. Improve Gender Equity in Access to Technology

To improve gender equity in access to technology in the United States and globally, we will increase investment in initiatives to close persistent gender gaps in access to technology, including internet connectivity, broadband, and mobile phone ownership, to facilitate access to telemedicine and online education and familiarity with skills imperative to success in the 21st century workforce. We will also invest in research on the effects of social media on mental health, including for women, girls, and LGBTQI+ people, as well as the safe uses of technology as a vehicle to provide mental health services.

c. Encourage STEM innovation and entrepreneurship

Given the importance of STEM skills to entrepreneurship and economic security, we will increase opportunities for diversity, equity, inclusion, and gender parity in the innovation economy by promoting entrepreneurial skills as part of STEM research, apprenticeship and training opportunities. We also will expand opportunities to participate in STEM research and development projects in cultural centers, public labs, community colleges, and minority-serving institutions, and in partnership with federal agencies with significant STEM components.

Globally, we will provide opportunities to lead in international science and technology collaborations, partnerships, and competitions, recognizing that science diplomacy is a critical tool for sharing American ideals of gender equity abroad and provides an opportunity to model equitable engagement in our technology-driven global economy.

Advance Full Participation in Democracy, Representation, and Leadership

Improving gender parity in representation and leadership is integral to achieving all other strategic priorities outlined in this strategy. Supporting women's full participation in leadership roles and ensuring they are well-represented at the tables where decisions are made—at every level—will enable us to meet our objectives across sectors, from the financial sector to the arts. We will advance diversity, equity, inclusion, and accessibility in the federal workforce; increase gender parity and diversity in leadership roles; ensure diversity and commitment to gender equality in justice sector roles; ensure diverse and inclusive participation and representation in decision-making; and support women- and girl-led organizations and movements.

The full participation of people of all genders is critical both to the functioning of democracies and to the success of democratic movements across the globe. At a moment when democracy at home and abroad is under assault, promoting the equitable participation of all people—regardless of gender—at all levels of political and civic life, from voting to leadership, is more important than ever. Research demonstrates that countries that provide a safe and enabling environment for women to participate equitably in politics and public life produce more inclusive and effective policy outcomes, are more peaceful, have higher economic growth, and are more stable as societies. As Vice President Harris noted both at the 2021 Commission on the Status of Women and the UN Generation Equality Forum, "the status of women is the status of democracy." We must strive to advance both.

We are committed to ensuring that people are represented equally in public life and at all levels of the federal government—irrespective of gender, race, sexual orientation, gender identity and other factors— starting with our history-making Vice President, and including the record number of diverse women serving in Cabinet and senior level roles. Yet more work remains to eliminate barriers to voting and reach gender parity in U.S. leadership. Today, too many states have laws on the books that inhibit women—particularly women of color—from exercising their constitutional right to vote. Women fill only a quarter of seats in Congress and 30% of state executive and legislative positions. In the private sector, women represent just 8% of Fortune 500 leaders and 28% on S&P 500 corporate boards, and remain underrepresented as leaders and managers.

Globally, women continue to be dramatically outnumbered in leadership positions and restricted from full political participation. Women constitute only a quarter of parliamentary seats around the world; only 14 countries have reached gender parity in their national cabinet; and women lead only 24 out of 193 nations as an elected Head of State and/or Government. In addition to persistent marginalization from leadership in the global economy, women also continue to be underrepresented in leadership positions in peace processes, climate negotiations, global health and humanitarian efforts, and in the private sector, notwithstanding evidence that their participation makes sustainable agreements more likely. And women's movements around the world, which have been shown to advance women's power and democratic participation, continue to be grossly underfunded.

Decades of evidence confirm that women's civil and political participation and leadership promote equality, social welfare policies like education and health care, political stability and security. Furthermore, studies show that investing in the leadership of girls is imperative to advancing the leadership of women.

To increase women's and girls' full participation in democracy and leadership roles, we will:

a. Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce

Fulfilling our commitment to gender equity and equality starts with ensuring that the federal government is as a model employer on diversity, equity, inclusion, and accessibility. In line with the Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, we will strengthen our ability to recruit, hire, develop, promote, and retain a diverse group of people in our workforce while removing barriers to equal opportunity, creating respectful workplaces, and ensuring that women's voices are heard, including through the advocacy of a union if they choose.

To advance gender parity and diversity in leadership roles, we will continue to promote diversity, equity, inclusion, and accessibility in federal appointments, including Cabinet positions, judicial appointments, Ambassadorships, military appointments, and other senior posts. We will also identify strategies to advance diversity, equity, inclusion and accessibility in leadership positions across the federal workforce—including federal contractors and locally employed staff across the globe—with a focus on recruitment, hiring, promotion, retention, professional development and mentorship, pay and compensation policies, discipline policies, and other mechanisms. Furthermore, we will examine opportunities for women in nontraditional occupations, including in science and technology, law enforcement, security, and intelligence.

Priorities include advancing pay equity and transparency to ensure all federal employees are fairly compensated for their work and talents. We will also address workplace harassment, including sexual harassment, with a government-wide, comprehensive plan to prevent, respond to, and investigate harassment, including by amplifying training, education, and monitoring to create a culture that does not tolerate harassment or other forms of discrimination. Furthermore, we will increase effective resources for diversity, equity, inclusion, and accessibility training throughout the federal workforce.

b. Increase Gender Parity and Diversity in Leadership Roles

We will promote transparency about diversity, equity, inclusion, and accessibility in leadership positions across a broad array of sectors, including public, private, multilateral, and civil society, taking steps to incentivize disclosure of representation in managerial positions and board composition, which strengthen companies' bottom lines. We will support research into best practices to advance gender parity and diversity, equity, inclusion, and accessibility in leadership positions across a range of sectors. We will invest in and evaluate initiatives to promote civic and political engagement and leadership for women and girls to close gaps and promote gender parity, diversity, equity, and inclusion.

Globally, we will support training and social norm change initiatives to advance roles for women, girls, and members of underrepresented groups across a range of sectors. We will also work with local partners—including male allies—within government institutions and political parties at the national and local levels to change corrupt and discriminatory internal rules and practices and promote women's agency and leadership. We will also support local and regional women activists and women's rights organizations in advocating for needed policy reforms, holding government institutions accountable, running for office, and attaining leadership positions within government institutions.

c. Ensure Diversity and Commitment to Gender Equality in Justice Sector Roles

The Biden-Harris Administration has already nominated a record number of diverse judges to the federal bench, including an historic number of women of color. The Administration will continue to prioritize the nomination and appointment of a diverse and representative group of people to the federal bench who are committed to ensuring equal rights under the law, including for women, girls, and gender nonconforming people.

Globally, to promote equal justice under the law and equal access to professional opportunities, we will work with partners and allies to advance diversity, inclusion, and accessibility and increase the representation of women in justice systems around the world, including as attorneys, judges, and in other law enforcement roles.

d. Ensure Diverse and Inclusive Participation and Representation in Decision-making

To improve decision-making processes and ensure fair representation, we will support gender parity and initiatives to increase diversity, inclusion, and participation in the U.S. political system, from voting to representation in civic and political roles. We will also advance gender parity and women's representation in democratic movements and governance institutions around the world, including in areas of conflict and crisis. We will pursue gender parity, diversity, equity, inclusion, and accessibility at decision-making tables across sectors, including by addressing barriers such as violence against women in politics and public life—including increasing levels of harassment, intimidation, and psychological abuse, in person and online.

We will also help enable safe environments for all people to participate freely in politics and public life, including in fragile contexts, peace processes, and democratic transitions. Wherever possible, we will advance women's and girls' meaningful participation and inclusion in bilateral and multilateral dialogues and processes, with a goal of reaching gender parity.

e. Support Women- and Girl-Led Organizations and Movements

To advance leadership and meaningful participation, we will promote movements and community-based organizations led by women, girls, and members of other underserved communities, including LGBTQI+ people. Both domestically and globally, we will support leaders and organizations pushing for greater power, influence, and leadership for women and girls and other underrepresented groups, which research confirms will pay powerful dividends in advancing women's economic participation, shifting attitudes about gender roles and gender-based violence, and promoting democracy.

Section III: Implementation

The White House Gender Policy Council will lead the implementation of this strategy, marshalling the resources of and working in collaboration with every White House office and executive agency. We will also ensure accountability by promoting regular reporting and transparency.

Whole of Government Implementation

The Gender Policy Council is composed of nearly all members of the President's Cabinet and federal agencies and the heads of other White House offices. Each member has appointed a senior representative to support the Council, and we produced this strategy in consultation with those senior representatives, as well as other experts and leaders across the federal government. The implementation of this strategy will be government-wide, which is an essential part of our commitment to integrating gender across U.S. programming and policies in all executive agencies.

The Gender Policy Council will coordinate with other components of the Executive Office of the President, including the Domestic Policy Council, the National Security Council, the National Economic Council, the Climate Policy Office, the Office of the Vice President, the Council of Economic Advisers, the Council on Environmental Quality, the Office of Science and Technology Policy, and the Office of The United States Trade Representative. This strategy aligns with the Interim National Security Strategic Guidance released by President Biden in March 2021.

We will also partner with multilateral institutions and support other global efforts to advance gender equity and equality. As the international community mobilizes to implement commitments to advance gender equality and achieve the Sustainable Development Goals, we will join with partners and allies to accelerate the pace of change and address global gender gaps through our foreign assistance and our participation in multilateral fora, including in the United Nations General Assembly and Generation Equality Forum, the G-7 and the G-20, the Summit for Democracy, the UN Climate Change Conference, and through the Build Back Better World Partnership, among other initiatives.

The Gender Policy Council will partner with the Office of Management and Budget (OMB) to facilitate implementation, working in concert with agencies to identify primary areas of focus, programs, and policies for review for consistency with this strategy.

Integration with Broader Equity Efforts

Our work to advance gender equity and equality through a whole-of-government approach falls within the Biden-Harris Administration's broader efforts to root out systemic barriers and discrimination and pursue equity and equality for all people. This strategy's implementation will be aligned with the fulfillment of mandates included in Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government"; Executive Order 13988, "Preventing and Combating Discrimination on the Basis of Gender

Identity or Sexual Orientation"; Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce; Executive Order 14020 “Establishment of the White House Gender Policy Council”; and all executive actions that address equity and equality for underserved communities.

Methods

Achieving the objectives outlined in the strategy requires articulating concrete goals, dedicating sufficient resources, and instituting metrics to measure progress. To that end, each federal agency will be required to establish and prioritize at least three goals that will serve to advance the objectives identified in this strategy, and detail the plans and resources needed to achieve them in an implementation plan. At least one of the identified goals should be achievable within current authorities and resources.

In recognition of the unique scope and needs of each agency, Gender Policy Council staff will offer technical assistance to agencies to help identify priorities for programming and policymaking in furtherance of this strategy. Agency implementation plans will be due within nine months of the public release of the national strategy.

Agency implementation plans should encompass strategic planning and budgeting, policy and program development, measurement and data, and management and training.

a. Strategic Planning and Budgeting

As part of standard strategic planning and budgeting processes, agencies should identify, under the auspices of their three priority goals: (i) the gender gaps they aim to close; (ii) outcome measures; and (iii) budgetary, staff, and other needs to achieve targeted objectives. OMB and the Gender Policy Council will work together to ensure that agencies’ budgets reflect the policies, activities, and investments outlined in this strategy.

b. Policy and Program Development

To advance concrete priorities identified in furtherance of this strategy, agencies should ensure a focus on gender equity and equality in policy and program development. This requires developing policies and programs that are primarily focused on advancing gender equity and equality. It also requires mainstreaming gender equity and equality considerations into initiatives that are not principally aimed at closing gender gaps. As part of this work, agencies should identify and address existing gender and racial disparities, capitalize on the skills and contributions of people of all genders, and ensure that policies and programs are accessible and responsive to needs irrespective of gender.

c. Measurement and Data

Too often, government programs in the United States and around the world fail to track or measure the effects of systemic barriers faced by women, girls, and other underserved populations. These gender data gaps, which exist in multiple areas—from the prevalence of gender-based violence to tax data to household level information on assets and homeownership—can obscure the scope of a problem. Such gaps also render our programs less effective and mask the effects of policies and initiatives on entire segments of the population, thereby undermining use of taxpayer dollars and failing to adequately serve populations most in need.

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Adequate collection of gender data is critical to establishing a baseline against which agencies can rigorously measure progress on identified priorities. To ensure rigorous measurement of progress against this strategy, we will embark on a government-wide effort to strengthen data collection and analysis and close gender data gaps. This aligns with the Biden-Harris Administration's commitment to gather and improve data to inform and promote equity. The Equitable Data Working Group—established on the first day of the Administration under Executive Order 13985—aims to strengthen data collection, reporting, and transparency across federal agencies and encourage improved, coordinated data across local and state governments. Pursuant to the Gender Policy Council's Executive Order, we will coordinate with this Interagency Working Group and propose reforms to strengthen data collection related to gender across the federal government.

We will support collection and analysis of sex-disaggregated data for all programs, to the maximum extent practicable, and will promote data collection and cross-tabulation on the basis of sex, race, ethnicity, sexual orientation, gender identity, disability, and socioeconomic status, among other factors, to ensure rigorous assessment of progress and barriers for underserved communities. We will encourage more frequent data collection and disaggregation by age and include data collection on factors such as pregnancy and parenting status to identify barriers in education, the workforce, and in other sectors. We will encourage more analysis and dissemination of the gender data we do collect, and we will support efforts to close gender data gaps, including by investment in national and sub-national statistical systems strengthening. We will also incentivize efforts to address gender data gaps through bilateral and multilateral relationships, recognizing that improvements in gender data collection are integral to advancing gender equity and equality worldwide.

d. Management and Training

To succeed in implementing this strategy, agencies should take steps to strengthen the commitment of managers to gender equity and equality, such as by including this issue in Senior Executive Service performance plans and appraisals. Agencies should also bolster training, skill development, and technical expertise where needed to ensure sufficient expertise to develop, lead, and manage strategic planning, programs, and monitoring and evaluation efforts. Agency leadership should help facilitate the hiring and retention of personnel with the knowledge and skillsets needed to promote implementation of identified strategic priorities.

Accountability

To promote accountability, the Gender Policy Council will prepare an annual report for submission to the President on progress made in implementing this strategy, which will be publicly released. We will also put in place mechanisms to track the work that we are doing across the federal government to advance gender equity and equality and assess the progress we are making towards our strategic priorities and the effect of our investments at home and abroad.

Consultation and Engagement

External partners have been and will continue to be essential to advancing our work to promote gender equity and equality. To inform implementation of this strategy, the Gender Policy Council will continue its engagement with Congress; State, local, Tribal, and territorial

government officials; a diverse range of nonprofit and community-based organizations; faith-based organizations; labor unions and worker organizations; students and youth; private sector representatives; foreign government officials; and multilateral organizations, among others, as appropriate. The Gender Policy Council and all agencies and offices involved in the implementation of this strategy will also regularly seek and reflect input from the people whom the strategy is directly intended to benefit.

Acknowledgements

The White House Gender Policy Council is grateful for the critical input and deep expertise that guided the development of this first-ever national gender strategy. The creation of this strategy has only been possible through collaboration across the federal government and extensive engagement with domestic and international partners.

We thank the over 30 U.S. federal government agencies and each of the components within the Executive Office of the President for their contributions. Senior Designees from each agency and office shared their vision, ideas, and feedback on the strategy's content.

We are also grateful to the diverse range of external stakeholders who provided input and recommendations for the strategy. Over 250 nonprofit and community-based organizations, civil society groups, faith-based organizations, unions, worker organizations, and academics participated in a total of 15 issue-based convenings hosted by the Gender Policy Council. In addition, we are grateful to the girls, young women, and gender nonconforming youth leaders—over 270 from across the United States and more than a dozen countries—who provided their thoughts and recommendations through a series of youth-focused listening sessions—and the local, national and global organizations who supported the participation of these youth leaders. Finally, we are grateful for the expertise shared by Members of Congress and State, Tribal and local leaders across the United States, as well as the valuable perspectives offered by partners in other governments and multilateral organizations.

Just as the formation of this strategy would not have been possible without rigorous engagement from a broad group of stakeholders, its implementation hinges on the work we will do together. We look forward to continuing this collaboration in the years ahead, in service of our vision of a world where people of all genders are guaranteed the equity, equality, and dignity they deserve.

Corporate Myth of Meritocracy

Posted by Brittany J. Harris | Aug 3, 2017 | Equity vs. Equality, Features, Recent Posts | 4

Post Views: 4,882

“Well, our culture is based on a system of merit…The right people with the right skills get the job, here.”

These were the ‘*profound*, *wise’* words [sarcasm] shared with me by a white, male executive at a former organization. He shared these sentiments after I responded to his questions around what my job was at the time, and what it meant to be ‘*working in diversity*.’ My answer was something along the lines of “*developing programs that ensure we have a diverse workforce*” and

"*creating an environment where employees from different backgrounds feel included and valued*." He went on to defend the culture of *meritocracy* that existed within the organization (*based on his experience*), and recommended we focus more on people's skills than their differences.

His response wasn't necessarily surprising. It was a trigger for me, though. While the interaction was short, and *perhaps* well-intentioned, the subtle invalidation of my role and my contribution could be likened to a paper cut—*quick and small, but sharp and painful.* It was those ongoing 'paper cuts,' that made corporate culture most challenging for me. As a practitioner in this field, you're encouraged (*perhaps even required*) to bring your whole self (*use of self*) in order to affect change and bring others along. As a black, millennial, woman in mostly white spaces, that took its toll.

When your lived experiences and truths drive your sense of urgency in pursuing this work and actualizing equity in the workplace, it can be challenging to thrive in environments where '*corporate speak*' and the false sense of meritocracy become a perpetual barrier by undermining those experiences.

While aspiring to become an organization that values merit as a principle and in practice is noble, it's impact can be detrimental to progress. The assumption and prescription to the myth that *everyone is treated the same based on their skills (equality)* can hamper the organization's and leadership's capacity to be critical of the systems, policies, and practices that might need to be changed in order for everyone to *fully experience a fair and inclusive work culture* (equity). It also undermines the human nature of bias (conscious and unconscious), the impact of microaggressions, and the role of our identities in how we experience the workplace *differently*.

Sentiments like "*Let's just focus on the skills*," and "*We hire the best person for the job*" in response to arguments for diversity, can send the message that diversity doesn't exist

here, *because people from diverse backgrounds (ie. People of color) do not have the skills*, *cannot do the work*. Data, studies, and surveys have proven this not to be true. If left unchecked, this way of thinking shifts responsibility in affecting change from those who have the power and influence to do something about it, to those who historically have not. And we cannot fully achieve equity and inclusion this way.

A few weeks ago, one of our consultants shared an essay that emphasized the significance of language—differentiating diversity and inclusion from equity and justice—when pursuing systemic change on college campuses. The author posits that "*By substituting diversity and inclusion rhetoric for transformative efforts to promote equity and justice, colleges have avoided recognizable institutional change.*" They go on to provide some compelling examples:

Diversity asks, "Who's in the room?" Equity responds: "Who is trying to get in the room but can't? Whose presence in the room is under constant threat of erasure?"

Inclusion asks, "Has everyone's ideas been heard?" Justice responds, "Whose ideas won't be taken as seriously because they aren't in the majority?"

Diversity asks, "How many more of [pick any minoritized identity] group do we have this year than last?" Equity responds, "What conditions have we created that maintain certain groups as the perpetual majority here?"

Inclusion asks, "Is this environment safe for everyone to feel like they belong?" Justice challenges, "Whose safety is being sacrificed and minimized to allow others to be comfortable maintaining dehumanizing views?"

Similarly, there is opportunity for us to consider these same questions and differentiations in the context of equity vs. equality in corporate spaces.

Equality **says**, "*Everyone is treated the same here*." Equity **challenges** and **acts**, "*What policies, systems, and practices must be addressed or dismantled in order for everyone to be treated fairly*? Challenging and acting on these questions can't happen if we're distracted by this veil of meritocracy.

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ABOUT THE AUTHOR

Brittany J. Harris

Brittany J. Harris is the Vice President of Learning and Innovation at The Winters Group, Inc. All day, every day she is #BraxtonsMom. She works to curate spaces and develop solutions that shift perspectives and change hearts in service of equity, justice, and inclusion. Brittany is also the creator of Liberated Love Notes: Critical Self-Reflections & Affirmations for The Culture.

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Steve on August 8, 2017 at 10:32 am

Mary Frances and others,
I really appreciate these posts and writings you submit. Even though I know some things, it's still maddening and hurtful to read about how a simple act of trying to buy a dog can have such repercussions.
What is true is there are two different worlds. One for people of color and one for white people. I got into a heated argument one time with a white pastor about this. He told me we live in one world.

While we may be on the same planet I think there are two different worlds. Your story reinforces that.
However if we strive to be inclusive difference makers we keep on trucking.
Our mission at Hanamura Consulting is: Celebrate oneness. This means helping all people reach their full potential.

Take care and keep up the good work
Steve

Reply

Derrick Clay on August 26, 2017 at 4:12 am

My name is Derrick Clay. I work at an automobile manufacturer within MS. I lead the African American BPG within that organization. I was wondering if Brittany Harris is available for speaking engagements. The article speaks directly to an internal challenge we are having (as well as other large organizations) and I believe our upper management could benefit from the insight. Please contact me with details regarding speaking engagements.

Reply

Daniel on February 20, 2018 at 5:59 am

“These were the ‘profound, wise’ words [sarcasm] shared with me by a white, male executive at a former organization.”

Why are you making judgements about him based on his race and sex? If judgements were made about say a black woman like yourself I’m sure that’d be seen as racist and sexist. Surely the goal should be to transcend arbitrary notions of race and gender rather than perpetuating them.

“His response wasn’t necessarily surprising. It was a trigger for me, though. While the interaction was short, and perhaps well-intentioned, the subtle invalidation of my role and my contribution could be likened to a paper cut—quick and small, but sharp and painful. As a practitioner in this field, you’re encouraged (perhaps even required) to bring your whole self (use of self) in order to affect change and bring others along. As a black, millennial, woman in mostly white spaces, that took its toll.”

This is full of hyperbolic dramatisations to invoke a sense of

victimhood in your narrative with the misuse of psychological terms like “trigger”. You were faced with a differing opinion which you should hear and engage with. That’s the problem in today’s world of political polarisation. Too many people are living in echo chambers. If you’re against meritocracy which is a valid position then lay out the facts and posit your point of view. Invoking your feelings just serves as a logical fallacy.

“It also undermines the human nature of bias (conscious and unconscious), the impact of microaggressions, and the role of our identities in how we experience the workplace differently.”

Well everyone expresses bias just like you have throughout this article towards a person who is white, male and (possibly) conservative. There are no problems with “microagressions” because they’re micro meaning they’re next to invisible. Anything that somebody could (mis)interpret as upsetting can be labelled as a “microagression”. It’s a complete farce. Identity politics serves nothing more than box people into different identities before anything else and obsess over them.

You state throughout the article that you’re against meritocracy. If that’s the case then how did you manage to get to where you are? Obviously you have the education, skills and work ethic to do that (and kudos to you for that). You’re also Vice President of Innovation and Learning at The Winters Group. Obviously you required a certain amount of merit to get to where you are surely.

Reply

Brittany Harris on February 20, 2018 at 11:46 am

Hi Daniel,
We are not against meritocracy.
This post affirms that, based on some of our experiences, ‘meritocracy’ is often time a myth or veil that makes it difficult for organizations to use a critical lens when examining if their processes and culture support creating an equitable, inclusive environment.

This post is a reflection of my truth and experiences.
Thank you for reading.

Reply

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THE INCLUSION SOLUTION

The Inclusion Solution blog is a product of **The Winters Group, Inc**. The blog focuses on issues of diversity and inclusion and also offers some solutions for a more inclusive world.

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Leaders: Are you equitably supporting employees?

By knowing the difference between workplace equity and equality, people managers can better support their employees' career paths and team diversity.

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Are you treating your employees equally, or equitably?

Equality is treating everyone the same. What's offered to one is offered to all.

Equity is providing the support each person needs – and that support will vary depending on the individual's goals, background and identity.

Fairness Is Not Equitable

As leaders, we focus on being fair-minded. And sometimes that looks like treating people the same. But fair and equal is not always equitable.

It's time to know the difference and how that difference influences your leadership.

Because when you focus on treating everyone the same in the spirit of fairness and equality, that means you're leaving no room for the unique differences that require you to think about how someone wants to be treated.

Create a Safe Environment

Talking to your employees is the foundation of getting to know what inspires and motivates, concerns and challenges each one of them.

The employee who aspires to be a future leader does not need the same growth opportunities as someone who wishes to delve deeper into an individual contributor, domain expert role. One path is not more desirable than the other, but they are very different paths.

When you assume the woman on your team wouldn't want to take on a role that requires evening meetings because she has young children, or that the youngest man on your team is driven by upward opportunities in your function instead of lateral moves across different businesses, you are potentially derailing your talent and your team's effectiveness.

Knowing your employees creates greater understanding. Yet many employees might not want to share details of their personal drivers and challenges because they don't feel safe, or fear career consequences if they do. The young father who doesn't want to take a new role that's heavy on travel because he doesn't want to leave his family. The queer engineer who is uncomfortable every time she's asked about her boyfriends. The older professional working to finish a college degree who suffers from imposter syndrome.

Create a Platform for Listening

We all are working to attract talent. What's most important to me is the experience once they are here: to be a place where people can bring their best selves to work, where they can expect a career that's their own, not a template of success colored with broad lines but instead one of their own making.

This requires a sense of belonging and safety. For managers, that means listening and sometimes, sitting with the discomfort. That might sound counter-intuitive especially if you have a bias for action. You are a manager who does things, fixes things, and makes things better.

To build trust, you must listen to understand your employee's experience – with curiosity, courage and conviction to learn:

- **Curiosity.** Children ask questions because they want to understand why and how. Ask questions with the same innocent curiosity and be open to receiving questions with this same intent.
- **Courage.** If you are speaking with someone who has an identity different from your own, you might feel vulnerable to being labeled as "anti" regarding what you don't know or understand. This can create discomfort for both of you. Stick with it. It's important that you stay in the moment no matter how messy it feels.
- **Conviction to learn more.** Keeping the conversation going requires openness to learning and the ability to suspend judgment based your experiences or assumptions. Many times people will ask me 'about my experience' when they really want to know about being a black woman with a supply chain degree who now focuses on diversity and inclusion. The do not yet feel safe enough for specificity; I want to talk about what they want to know, and not necessarily what they asked.

Once you understand, then you can ask, "What do you need from me?" "How can I support you?" "Is there something you need me to do?"

Create Space for Mistakes

As a manager, you hopefully encourage experimentation and risk-taking. Know that if someone is the 'only' in a group, their ability to take risks is greatly diminished. There is little room for error for the only black woman, the only gay man, the only Muslim, the only non-college grad at the table. When they are the 'only,' they can feel the pressure to represent 'all.'

When there's no room for mistakes, there's less room for innovation – and that hurts us all.

And that brings me back to the tenet that equal is not equitable. What works for one employee most certainly will not for another, since beyond race, ethnicity, sexual orientation, generation and disability status, there are so many identities, characteristics and experiences that make each employee an individual, deserving of unique space and support.

Support the Work

To support this work, for our managers we are launching a full training program to lean into

these conversations. The workshops include discussions on inclusive communication, and

how to cultivate tools to recognize and combat microaggression; and managing diverse teams inclusively, including strategies and tools for building trust, psychological safety, and greater inclusion within a team.

Published October 18, 2021

Candace Barnes

Director, Global Diversity, Equity and Inclusion Programs, Rockwell Automation

AMERICAN JOURNAL
of LAW *and* EQUALITY

EQUALITY VS. EQUITY

Martha Minow*

"There's a big difference between equality and equity," said now Vice President Kamala Harris as she ran for the presidency of the United States, and many millions watched and shared her video, which depicted one mountain climber who starts in a deep hole and another who starts much higher up.[1] On the very day of his inauguration, with Vice President Harris at his side, President Joe Biden embraced the word "equity" in executive orders.[2] He charged Susan Rice, director of his Domestic Policy Council, "with ensuring that the new administration embeds issues of racial equity into everything it does."[3] Federal agencies have been ordered to report on systemic barriers hampering access to benefits, services, and procurement opportunities.

Immediately, critics responded with objections. Some charged the new administration with seeking to install discriminatory practices, favoring some racial and ethnic groups over others and attempting to inflame rather than heal racial division.[4] Commentator Noah Rothman warned, "In practice, that looks less like 'equity' and more like 'retribution.'"[5] Others attacked the Biden administration's approach for promoting a "spoils" system,

Author: *Martha Minow is the 300th Anniversary University Professor, Harvard University. The author thanks Mira Singer, Joe Singer, Ben Eidelson, Blessing Jee, Gish Jen, Randy Kennedy, David Sanchez, Cass Sunstein, and Rick Weissbourd for their contributions.

1 Kamala Harris (@KamalaHarris), *Equality vs. Equity*, TWITTER (NOV. 1, 2020), https://twitter.com/kamalaharris/status/1322963321994289154?lang=en (6.4 million views).

2 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

3 Joe Davidson, *Susan Rice Wants Every Federal Agency to Focus on Racial Equity*, WASH. POST (Jan. 29, 2021) (quoting Susan Rice), https://www.washingtonpost.com/politics/rice-biden-federal-racial-equity/2021/01/28/a9c0a3be-61b2-11eb-ac8f-4ae05557196e_story.html.

4 Noah Rothman, *What They Really Mean by "Equity,"* COMMENTARY (Jan. 27, 2021), https://www.commentarymagazine.com/noah-rothman/what-they-really-mean-by-equity/.

5 *Id.*

https://doi.org/10.1162/ajle_a_00019

more governmentally imposed constraints on freedom, and abandonment of equality.[6] In contrast, key advisor Rice declared, "Advancing equity is a critical part of healing and of restoring unity in our nation."[7] Robert Kuttner, a commentator on the left, however, warned that change will come only with massive restructuring of the power relations across labor, capital, and government, as well as class-based coalitions against racism.[8]

The political debate reflects, but also clouds, work underway in educational and employment settings. Over the course of the last decade, "equity" initiatives have been organized in U.S. schools, in human resources departments at colleges, in corporations, in philanthropies, and in nonprofit organizations. Often, "equality" appears as the inadequate alternative. For example, a memorable cartoon circulating on the internet depicts two scenes of three children looking over a fence at a ball game. The first scene is labeled "Equality" and shows each child standing on a box with the tall child looking easily over the fence, a middle-size child able to just see over the fence, and a small child unable to see over the fence at all. The second scene, labeled "Equity," depicts the tall child able to look over the fence while standing on the ground, the middle-size child able to see over the fence by standing on one box, and the small child, now standing on two stacked boxes, also able to see over the fence; all three are essentially getting the same view.[9] The images provide vivid contrasts. They are invoked in discussions urging equity rather than equality. Individualized accommodations for students with disabilities represent one version of equity, already mandated and implemented by law under frameworks labeled in terms of antidiscrimination, inclusion, or equality. Whatever it is called, treating everyone the same, regardless of background factors, historical inequities, and personal situation, inspired Anatole France's observation, "The law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread."[10]

6 Political scientist Charles Lipson asserted that "equity," as used by the Biden administration, is only a buzzword hiding the important questions about the consequences of government coercion, bureaucratic regulation, and public expense. Charles Lipson, "*Equity" Is a Mandate to Discriminate*, Wall St. J., Mar. 5, 2021, at A17. *See* Mike Gonzalez, *Biden's Embrace of "Equity" Means He's Abandoned the Quest for Equality*, The Heritage Found. (Feb. 2, 2021), https://www.heritage.org/progressivism/commentary/bidens-embrace-equity-means-hes-abandoned-the-quest-equality; Andrew C. McCarthy, *Merrick Garland Misleads on "Equity" and "Equality,"* The Nat'l Rev. (Feb. 23, 2021), https://www.nationalreview.com/2021/02/merrick-garland-misleads-on-equity-and-equality/; Jason L. Riley, *Progressives Put the Racial "Equity" Squeeze on Biden*, Wall St. J. (Feb. 2, 2021), https://www.wsj.com/articles/progressives-put-the-racial-equity-squeeze-on-biden-11612307761.

7 Nick Niedzwiadek, *Biden Issues Executive Orders Promoting Racial Equity*, Politico (Jan. 26, 2021), https://www.politico.com/news/2021/01/26/biden-executive-orders-racial-equity-462663.

8 Robert Kuttner, *Will Biden Be Radical Enough?*, Am. Prospect (Mar. 18, 2021), https://prospect.org/politics/will-biden-be-radical-enough/.

9 Interaction Institute for Social Change, Equality & Equity: *Cartoon Gallery*, https://interactioninstitute.org/equalility-equality-cartoon-gallery/.

10 Anatole France, Le Lys Rouge [The Red Lily] 118 (1894), https://fr.wikisource.org/wiki/Le_Lys_rouge/VII.

Tailored treatment, rather than identical treatment, could proceed based on assessments of an individual's needs and situation or instead based on diagnosis of systemic conditions of disadvantage and exclusion.

But the contrast between the terms "equality" and "equity" does not illuminate real differences in potential visions of society. The terms "equality" and "equity" have become weapons in polarized political arguments rather than analytic tools. The political volley over words neglects and obscures decades of litigation, policy, and academic work in both American law and comparative law. The U.S. Constitution prohibits government denial of "equal protection" of the laws; state and federal statutes guard against discrimination on the basis of individual characteristics (e.g., race, gender, disability, age, sexual orientation or identity). The relevant state or federal authority does not use the term "equity." In ongoing litigation challenges to any attention to race used by the admission processes of selective colleges and universities, the defense must proceed by reference to the Fourteenth Amendment's guarantee of equal protection of the law as well as statutory protections against discrimination or exclusion on the basis of race.[11] Dumping on "equality" is a poor strategy for any who support inclusion, affirmative action, and overcoming historic and ongoing barriers based on individuals' group membership or situation. Attacking "equality" jeopardizes public support and surrenders intellectual and legal resources—including laws and judicial decisions—otherwise available for enforceable changes. Ceding the term "equality" to those who oppose any redress of historic and systemic disadvantages is especially shortsighted in a nation where courts have ruled that "classification" of individuals on the basis of certain personal characteristics (including race, gender, and religion) requires the most skeptical scrutiny. Further, tensions among current uses of "equity" hamper articulation of and steps toward potential initiatives at the levels of interpersonal, institutional, economic, and political action.

This article seeks to clarify the meanings behind contemporary uses of the terms "equality" and "equity." It also supports the conception, associated at times with equality and at times with equity, of laws and policies that are responsive to individual and structural differences in people's circumstances. Lawyers, students, and policy makers work every day with the constitutional language of "equal protection of the laws," as well as with statutes and regulations forbidding discrimination on the basis of protected traits, such as race and gender. Although these sources do not speak of "equity," dismissing them would be a big mistake. Not only are these sources the law of the land: the terms and underlying conceptions of "equal protection" and "antidiscrimination" can be crucial tools for redeeming the promise of the Declaration of

11 *E.g.*, Students for Fair Admissions v. President and Fellows of Harvard College, 980 F.3d 157 (1st Cir. 2020), cert. pending (rejecting plaintiff's challenge to Harvard's race-conscious admissions program, holding that the program does not violate Title VI of the Civil Rights Act of 1964; the court relied on standards developed under the constitutional Equal Protection Clause).

Independence and the Reconstruction Amendments—the promise of a nation where each person is secure and enjoys the same freedoms and opportunities as others, a nation that rejects status spelled by birth, race, or other happenstance. This is a promise worth fortifying, elaborating, and improving, not casting out or conceding away to those who resist continuing struggles in this historic spirit.

I. CONTEXTS AND DEFINITIONS: DIFFERENCES AND CONVERGENCES

Testing any classification of individuals by reference to a group trait—and questioning any treatment that differs from treatment of others—is simply one understanding of equality and a narrow one at that. As Professor Owen Fiss showed a half century ago, the use of the term "equality" can instead signal comparisons of groups and direct challenges to entrenched patterns of hierarchy and subordination on the basis of group traits.[12] Dr. Martin Luther King, Jr., Malcolm X, Eleanor Roosevelt, and Ruth Bader Ginsburg each pursued this vision of equality and its resulting expansive methods while also embracing the recognition of the dignity of each individual.[13]

Current emphasis on "equity" implies a shift from the earlier social justice movements epitomized by King, Roosevelt, and Ginsburg. Mounting evidence over decades shows that eliminating explicit, lawful discrimination does not undo patterns of disadvantage. Moreover, an implicit narrative of a zero-sum game helps to perpetuate defenses of current arrangements.[14] The treatment of racial and ethnic identities spells ongoing injustices even for people who do not descend from enslaved individuals in the United States. These include more recent immigrants identified as Black, Latinx communities, and Asians. Subjugation based on disability, gender, sexual orientation, national origin, religion, and other markers of difference each has its own history and perpetuated suffering that bears on the search for what is signaled by the call for equity. Even before the COVID-19 pandemic, disparities in the wealth and income of Americans grew to rival those of the

12 Owen Fiss, *Groups and the Equal Protection Clause*, 5 Phil. & Pub. Affs. 107, 147–56 (Winter 1976).

13 *See, e.g.*, Ruth Bader Ginsburg: "*We*" (quoted in Michael Posner, *My Legal Hero: Ruth Bader Ginsburg*, The Guardian (Sept. 15, 2010)), https://www.theguardian.com/law/2010/sep/15/legal-hero-ruth-bader-ginsburg; Malcolm X: "Our objective is complete freedom, justice and equality by any means necessary" (Malcom X, Speech at the Founding Rally of the Organization of Afro-American Unity (1964)), https://www.blackpast.org/african-american-history/1964-malcolm-x-s-speech-founding-rally-organization-afro-american-unity/; Martin Luther King, Jr.: "The movement for equality and justice can only be a success if it has both a mass and militant character; the barriers to be overcome require both," (Dr. Martin Luther King, Jr., Stride Toward Freedom: The Montgomery Story (1958)); Eleanor Roosevelt: "We must show by our behavior that we believe in equality and justice and that our religion teaches faith and love and charity to our fellow men," (in Eleanor Roosevelt, India and the Awakening of the East (1963)), https://erpapers.columbian.gwu.edu/quotations.

14 *See* Heather McGhee, The Sum of Us: What Racism Costs Everyone and How We Can Prosper Together (2021).

Great Depression.[15] "The gaps in income between upper-income and middle- and lower-income households are rising, and the share held by middle-income households is falling," reported the Pew Research Center in January of 2020.[16] Financial inequalities and polarization began to rival the Gilded Age when excessive wealth juxtaposed with massive poverty so divided the nation.[17] Then came the COVID-19 virus, jeopardizing health and human lives and also exposing and exacerbating economic inequalities and racial differences in resources, vulnerabilities, and healthcare.[18] The egregious violence and racial disparities in policing, prosecutions, and incarceration long experienced by African Americans became undeniable across the nation with the vicious police murder of George Floyd.[19]

In the field of education, dismantling laws that used race for student public school assignments did not end prior and ongoing disparities over resources and expectations. After courts rejected legally enforced racial segregation, conscious and unconscious racial biases persisted or grew worse. The result has been many nonwhite students stuck in schools marked by concentrated poverty, fewer resources, and lower test scores than schools that are predominantly composed of white students.[20] The use of "equity," especially in the context of schooling, reflects the disappointments of "equality" and "equal protection" as interpreted and implemented.

The turn to "equity" marks a search for different results. The hope may be that "equity" opens possibilities of probing deeper into ongoing issues unresolved by easy claims of "equal opportunity" or "equal protection." Yet defining that vision in ways that can be put into operation requires more than simply a shift in words and more than a gesture to unclear alternatives.

The definitions commonly associated with the words show interchangeability rather than sharp contrast. Indeed, they are commonly used to define one another. The Oxford English Dictionary gives "fairness, impartiality, equity" as a definition of "equality" and defines "equity"

15 *20 Facts About U.S. Inequality that Everyone Should Know*, Stanford Ctr. on Poverty & Ineq. (2011), https://inequality.stanford.edu/publications/20-facts-about-us-inequality-everyone-should-know.

16 *The Gaps in Income Between Upper-Income and Middle- and Lower-Income Households Are Rising and the Share Held by Middle-Income Households Is Falling*, Pew Rsch. Ctr. (Jan. 8, 2020), https://www.pewsocialtrends.org/2020/01/09/trends-in-income-and-wealth-inequality/screen-shot-2020-01-08-at-5-06-47-pm/.

17 Robert D. Putnam with Shaylyn Romney Garrett, The Upswing: How America Came Together a Century Ago and How We Can Do It Again 285 (2020).

18 Zia Qureshi, *Tackling the Inequality Pandemic: Is There a Cure?*, Brookings (Nov. 17, 2020), https://www.brookings.edu/research/tackling-the-inequality-pandemic-is-there-a-cure/.

19 Helen Cheung, *George Floyd Death: Why US Protests Are So Powerful This Time*, BBC (June 8, 2020), https://www.bbc.com/news/world-us-canada-52969905. *See Report to the United Nations on Racial Disparities in the US Criminal Justice System*, The Sentencing Project (Apr. 19, 2018), https://www.sentencingproject.org/publications/un-report-on-racial-disparities/.

20 Martha Minow, In Brown's Wake: Legacies of America's Educational Landmark 7 (2010).

as "the quality of being equal or fair."[21] Merriam-Webster Dictionary starts its many definitions for "equity" with "free from bias or favoritism" or "justice according to natural rights or law."[22]

In some current usages, "equity" implies something more focused on results and on accommodation of individual differences. It is often used to call for systemic changes. Yet in some debates over public school finance, "equity" means allocating the same dollar amounts across different school districts, regardless of tax base or the tax rate used to generate revenues—as juxtaposed to "adequacy," meaning ensuring an educational system of a certain definable level of quality.[23] "Equity" in school finance has itself come to carry multiple contrasting meanings, including (1) meeting the needs of low-income students as well as wealthy ones ("vertical equity"); (2) equal efforts by individual districts—taxing themselves at the same rate, even if the underlying taxable property is of different value; or (3) "equitable access" to educational opportunities reasonably designed to allow expected educational achievements.[24] An underlying point of difference is the choice of what to compare, such as expenditures per student, costs of meeting the needs of diverse students, or efforts by local communities to tax themselves to meet student needs.

Some organizations group together the terms "antidiscrimination," "equality," and "equity" and, hence, seem not to view "equity" and "equality" as at odds.[25] Most Americans embrace equality as a norm, even if they disagree over its meaning. Disagreements often erupt over treatments of race, gender, and economic status. The Anne E. Casey Foundation, active on these issues, notes that "[o]ften, race-focused conversations derail because people are using the same terms in different ways."[26]

21 Compare the word "equality" in 1 Oxford English Dictionary 886 (compact ed. 1971) with the word "equity" in 1 Oxford English Dictionary 888 (compact ed. 1971). *The Merriam-Webster Dictionary* defines "equal" (adj.) as "of the same measure, quantity, amount, or number as another," "like in quality, nature, or status," and "like for each member of a group, class, or society," https://www.merriam-webster.com/dictionary/equal, and defines "equality" (noun) as "the quality or state of being equal: the quality or state of having the same rights, social status, etc.," https://www.merriam-webster.com/dictionary/equality.

22 Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/equity. The Oxford English Dictionary offers as its first definition for "equity": "the quality of being equal or fair." Alternatively, the definitions include "what is fair and right," "the recourse to general principles of justice . . . to correct or supplement the provisions of the law."

23 Albert H. Kauffman, *Equity and Adequacy Concepts as Considered in School Finance Court*, IDRA Newsletter (March 2004), https://www.idra.org/resource-center/equity-and-adequacy-concepts-as-considered-in-school-finance-court-cases/. The school finance context itself has produced multiple and contrasting meanings of "equity." *See* GAO, *School Finance: Three States' Experiences with Equity in School Funding* (Dec. 1995), https://www.gao.gov/assets/hehs-96-39.pdf (report to congressional requesters).

24 Paul A. Minorini & Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future*, *in* Equity and Adequacy in Education Finance: Issues and Perspectives 34 (Helen F. Ladd et al. eds., 1999).

25 *See, e.g.*, *Equity and Diversity*, Buffalo St. Coll., https://equity.buffalostate.edu/ (last visited July 21, 2021).

26 Anne E. Casey Foundation, *Equity vs. Equality and Other Racial Justice Definitions* (Aug. 24, 2021), https://www.aecf.org/blog/racial-justice-definitions/.

A new word alone cannot herald social transformation, especially if the word itself lacks well-defined meaning. "Equity" actually has specific meanings: it refers to the common stock of a corporation, or ownership rights in property, or a claim recognized by law. Lawyers and historians of England know equity as a form of litigation and remedy originally rooted in the powers of the British monarch to provide legal recourse where the local common law itself ran out; here, "equity" refers to what emerged, and in some ways persists, as a distinctive system of individualized justice outside strict application of usual rules and advancing conscience and responsiveness to need.[27] Originally established as a separate court—the King's Court of Chancery—equity norms and principles merged with standard state and federal courts within the United States; equity provides the authority for judicially ordered flexible corrections to otherwise rigid rules and allows shaping remedies tailored to the particular instance. "Equity" in law also draws on concepts from ancient Greek and Roman law and from Christian ideas.[28] From these historical sources, "equity" involves adapting existing law to changing conditions or to unique circumstances and, often, departure from general, settled rules.[29] The results can be unpredictable, subject to the views or whims of particular decision-makers.

Outside of legal contexts, the meaning of "equity" can be protean. Conservative commentator Shelby Steele explains the attraction for political progressives of a new, emptier term to organize around, and said "equity was perfect because it meant absolutely nothing."[30] Over the span of several years, "equity" in school finance alone has taken on many contrasting and inconsistent meanings.[31] More than 150 years ago, the legally trained political philosopher Jeremy Bentham warned, "Taken by itself, or anywhere else than in the company of the word *court, equity* is abracadabra."[32] Ambiguous and malleable, equality and equity might each come into sharper focus with attention to their antonyms: *in*equality and *in*equity signal injustice and unfairness and exclusion or denials of opportunities, protections, rights, or remedies.

Education reformers are at the forefront of embracing the term "equity" rather than "equality." One nonprofit education advocacy group explains, "Equality suggests providing every student with the same experience. Equity means working to overcome the historical

27 *See* Frederick Pollock, The Transformation of Equity, Essays in Legal History 287 (1913); Sharon K. Dobbins, *Equity: The Court of Conscience or the King's Command, the Dialogues of St. German and Hobbes Compared*, 9 J.L. & Religion 113 (1991).

28 Hessel E. Yntema, *Equity in the Civil Law and the Common Law*, 15 Am. J. Comp. L. 60, 66–72 (1966–1967).

29 *Id.* at 84–86.

30 Tunku Varadarajan, *How Equality Lost to "Equity,"* Wall St. J. (Feb. 13–14, 2021), https://www.wsj.com/articles/how-equality-lost-to-equity-11613155938 (quoting Shelby Steele).

31 Robert Berne & Leanna Stiefel, *Concepts of Equity: 1970 to Present, in* Equity and Adequacy in School Finance: Background Papers (H.F. Ladd et al. eds., 1999).

32 Yntema, *supra* note 28, at 60 (quoting Jeremy Bentham, *Rationale of Judicial Evidence*, *in* 7 Works 291–92 (Bowring ed., 1843)).

legacy of discrimination, marginalization, and underinvestment that disadvantages specific groups of people, especially defined by race. Equity requires providing support tailored to the specific needs of students."[33] Rejecting identical resources and identical instruction as insufficient to meet the different needs of different students, education advocates stress that "equity" calls for something different than the same treatment for all that they associate with "equality."[34]

Individualized treatment, responsive to particular needs, contrasts with across-the-board treatment.[35] A vivid version of the idea says, "Equality is giving everyone a shoe, equity is giving everyone a shoe that fits."[36] This approach of individualized treatment is the specific remedy afforded to public school students under the Individuals with Disabilities Education Act.[37] Students who are identified as having a disability can obtain an Individual Education Plan, which is designed with both content and methods of instruction depending on the context of the particular situation and needs of the specific student. Other interpretations of equity also focus on individual needs.[38] Relatedly, but with a different moral tenor, DeRay Mckesson (an organizer of Black Lives Matter) stresses, "The difference between equity and equality is that equality is everyone get the same thing and equity is everyone get the things they deserve."[39]

Besides highlighting the importance of tailoring to individual needs, equity can emphasize self-determination or shifts in power to and participation by people who have been marginalized. Verna Myers, a leader in the diversity, equity, and inclusion field, has said: "Diversity is being invited to the dance. Inclusion is being asked to Dance."[40]

33 *Equity in Education*, Achievement Network, (June 13, 2018), https://www.achievementnetwork.org/anetblog/eduspeak/equity-in-education.

34 *See* Blair Mann, *Equity and Equality Are Not Equal*, Educ. Tr. (Mar. 12, 2014), https://edtrust.org/the-equity-line/equity-and-equality-are-not-equal/.

35 It is a contrast, but not a contradiction, to see an individual as a member of a group. *See* Benjamin Eidelson, *Respect, Individualism, and Colorblindness*, 129 Yale L.J. 1600 (2020), https://www.yalelawjournal.org/pdf/EidelsonArticle_q57kq826.pdf. The social meanings attached to group membership contribute to the experiences and identity of each individual and, in turn, are part of what respecting that individual as an individual entails.

36 Attributed to Naheed Dosani, *in* Lisa A. Koenecke, *The Letter "E" . . . Equality v. Equity* (Aug. 18, 2019), https://lisakoenecke.com/2019/08/18/the-letter-e-equality-vs-equity/. (Koenecke is an Indiana school counselor and "inclusion ally.")

37 *See About IDEA*, U.S. Dep't of Educ., https://sites.ed.gov/idea/about-idea/.

38 Steven C. Bahls, Augustana College, What's Most Important: Equity or Equality? (Nov. 23, 2015), https://digitalcommons.augustana.edu/cgi/viewcontent.cgi?article=1070&context=presidentsstatements.

39 Jonathan Shieber, *For DeRay Mckesson, the Social Justice Movement Needs to Move from the Streets to the Statehouse*, TechCrunch (June 6, 2017), https://techcrunch.com/2017/06/06/for-deray-mckesson-the-social-justice-movement-needs-to-move-from-the-streets-to-the-statehouse/. *See* DeRay Mckesson, On the Other Side of Freedom: The Case for Hope (2018).

40 Verna Myers, *Harvard Business School Has a Problem: Here's How to Fix It*, Refinery 29 (May 24, 2017), https://www.refinery29.com/en-us/2017/05/156009/harvard-business-school-diversity-issue-essay. *See* Daniel Juday, *Inclusion*

University of Houston administrator Cynthia Olmedo adds, "Equity is allowing you to choose the Music."[41] In this vein, a professional development initiative of Tuskegee University and its Cooperative Extension program on diversity, equity, and inclusion emphasizes that equity means promoting justice with an understanding of the root causes of outcome disparities, including the social distribution of resources.[42]

The Ford Foundation connects equity with fairness and equal opportunity. Hence, its values statement defines equity as "fair treatment, equality of opportunity, and fairness in access to information and resources for all."[43] Others in philanthropy debate the meaning of equity and acknowledge it is a term in search of a definition.[44] Diversity, equity, and inclusion experts working in corporate, nonprofit, and education settings mix together these notions of fairness and commitment to changing processes and resource distribution. Thus, Code for America's definition of equity states,

> Equity is fair treatment, access, opportunity, and advancement for all people, while at the same time striving to identify and eliminate barriers that have prevented the full participation of some groups. In order to improve equity, we must increase justice and fairness within the procedures and processes of institutions or systems, as well as their distribution of resources. Tackling equity issues requires an understanding of the root causes of outcome disparities within our society.[45]

Equality and equity both can call for understanding root causes of inequity and inequality, including historic patterns of privilege and disadvantage reflected in public policies and private views. Overcoming these patterns requires changes in the allocation of resources and reformations of existing avenues to success and well-being. Differences in pay for work performed by women rather than men, for example, reflect occupational segregation and social and legal attitudes; hence "pay equity" means considering whether occupations dominated by women, such as nursing home aide, are really any less

Isn't "Being Asked to Dance," LinkedIn (May 3, 2017), https://www.linkedin.com/pulse/inclusion-isnt-being-asked-dance-daniel-juday.

41 Cynthia Olmedo, *Quotes*, GoodReads, https://www.goodreads.com/quotes/list/12145101-cynthia-olmedo.

42 eXtension Organizing Committee on Diversity, Equity, and Inclusion, *What Is Diversity, Equity, and Inclusion?*, Extension Foundation (2021), https://dei.extension.org/.

43 *People, Diversity, and Inclusion: Our Values* (2021), Ford Found., https://www.fordfoundation.org/about/people/diversity-equity-and-inclusion/.

44 Kris Putnam-Walkerly & Elizabeth Russell, *What the Heck Does "Equity" Mean?*, Stan. Soc. Innovation Rev. (Sept. 15, 2016), https://ssir.org/articles/entry/what_the_heck_does_equity_mean.

45 *Our Vision for DEI*, Code for Am. https://www.codeforamerica.org/diversity (regarding work with governments, design, and tech firms) (last visited July 21, 2021). For a very similar definition, see *Beyond the DE&I Acronym: What Are Diversity, Equity, and Inclusion?*, YW Boston (Mar. 26, 2016) (quoting Fatima Dainkeh).

demanding and worthwhile than occupations that have been dominated by men, such as corrections officer.[46] Deep changes in organizations and practices hold the possibility of starting fresh without the impact of longstanding exclusions and degradations. Another version of the cartoon of children peering behind a fence conveys the idea: some suggest replacing the wooden opaque fence with a more transparent chain-link fence, while a bolder idea proposes eliminating the fence altogether.[47] School counselor and blogger Lisa Koenecke asks, "What if we removed the fence all together? Let's consider taking away barriers in order to promote equity."[48] It is a powerful image. In practice, what does it mean: no fee for anyone to see a ballgame? Then how does the game become sustainable? What would that mean for college admissions and employment decisions?

Social justice facilitator Meg Bolger takes up these questions and focuses on advantages and barriers in employment related to gender and racial biases around candidates' names. In response, she explains: "Equitable processes seek to identify these imbalances and then create processes where the disparate outcomes wouldn't exist."[49] Rather than a particularized conception of justice focused on what each person deserves, her approach calls for changing systems to produce something approximating equality of outcomes for groups defined along certain dimensions—chiefly race. Bolger and other facilitators help companies, schools, and nonprofits adopt changes in processes and attitudes along these lines. Consultants and experts in the "diversity, equity, and inclusion" movement contribute to the public discussions comparing equity and equality and aiming for equality of representation or results for people from marginalized communities. In materials produced by "DEI" programs, "equality" is treated as "sameness," while equity is "fairness." One public health expert summarized that: equity may involve representation of members of minority groups in proportion to their share of the population; it may be subjective; it may require treating people differently; and it can "work" even if people come from different "starting points."

For some, equality does not follow representation based on proportions of the population; it is objective or measurable; it calls for treating people the same; and it does not "work" if people begin at different "starting points." [50] Some argue that "equity approaches

46 Anna Louie Sussman, *How to End "Women's Work": New Zealand Is Pursuing a Century-Old Idea to Close the Gender Pay Gap*, N.Y. Times (Nov. 13, 2020), https://www.nytimes.com/2020/11/13/opinion/women-pay-gender-gap.html (drawing on 1919 International Labor Organization constitution citing "the principle that men and women should receive remuneration for work of equal value").

47 *See, e.g.*, *Equality v. Equity*, Diffen, https://www.diffen.com/difference/Equality-vs-Equity (a picture illustrating the concepts of equality, equity and justice) (last visited July 21, 2021).

48 Koenecke, *supra* note 36.

49 Meg Bolger, *What's the Difference Between Diversity, Inclusion, and Equity?*, General Assembly Blog (May 24, 2020), https://generalassemb.ly/blog/diversity-inclusion-equity-differences-in-meaning/.

50 Sandesh Adhikari, *Equity vs. Equality: 20 Differences!*, Pub. Health Notes (May 16, 2017), https://www.publichealthnotes.com/equity-vs-equality/.

are needed to achieve equality."[51] Overcoming past and present disadvantages can require equity in order to achieve equality.[52] Scholars including Owen Fiss, Reva Siegel, and Cass Sunstein have framed equality itself as the tool to undo and overcome subordination and caste.[53] Thus, for those seeking commitments to overcoming past and present disadvantage, "equity" may seem the right word, and yet many conceive of "equality" in precisely these terms. If pressed to mean truly providing equal chances for people, "equality" demands attention and responses to different starting points, systemic disadvantages, and conditions affecting the success of individuals and groups.[54]

Focus on and redress for existing conditions and systemic disadvantages can be and have been claimed for "equality." A strong example came with the 1984 Canadian Equality in Employment Commission. Its report, written by Rosie Abella, who later became a justice of the Canadian Supreme Court, explained:

> The goal of equality is more than an evolutionary intolerance to adverse discrimination. It is to ensure, too, that the vestiges of these arbitrarily restrictive assumptions do not continue to play a role in our society. . . . It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.[55]

51 "Equality is the end result that we all seek to achieve. But, to get there, we must first ensure equity. Equity ensures that those people who are behind (socially, economically, politically, geographically, etc.) others get a little bit of extra support and push so that they can reach to their fullest potential and stand on equal ground with everyone. Therefore, although equity and equality are meaningfully different to each other, they are also deeply inter-related with each other." *Id.*

52 "Equality is undermined when equity is used incorrectly; it is undermined when a person or group's needs are not taken into account." Daisy, *Equality and Equity*, Soc. Change Blog (Mar. 29, 2019), https://social-change.co.uk/blog/2019-03-29-equality-and-equity.

53 Owen Fiss, *Another Equality: The Origins and Fate of Antisubordination Theory*, 2 Issues in Legal Scholarship, art. 20 (2004), https://law.yale.edu/sites/default/files/documents/faculty/papers/Fiss_AnotherEquality.pdf; Reva B. Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles Over* Brown, 117 Harv. L. Rev. 1470 (2003–2004); Cass R. Sunstein, *The Anticaste Principle,* 92 Mich. L. Rev. 2410 (1993). *See* Isabel Wilkinson, Caste (2020).

54 Brian Barry, Why Social Justice Matters (2005); Richard J. Arneson, *Does Social Justice Matter? Brian Barry's Applied Political Philosophy*, 117 Ethics 391 (2007), https://www.jstor.org/stable/10.1086/511732.

55 Rosalie Silberman Abella, Equality in Employment: A Royal Commission Report (1984), https://equalpaycoalition.org/wp-content/uploads/2017/07/Equality-in-Employment-A-Royal-Commission-Report-Abella-Complete-Report.pdf. For further exploration of developments in Canada, see Anthony Robert Sangiuliano, *Substantive Equality as Equal Recognition: A New Theory of Section 15 of the Charter*, 52 Osgoode Hall L.J. 601 (2015), https://digitalcommons.osgoode.yorku.ca/ohlj/vol52/iss2/9. *See* Fraser v. Canada (Attorney General) [2020] S.C.C. 28 (Can.) (rejecting on equality grounds pension plan devised for job-sharing due to adverse impact on

If "equality" carries this meaning, why the turn to "equity"? Perhaps the preference for the term "equity" is simply due to the attractions of something new, like a new branding campaign. That means naming a contrast between the approaches signaled by "equity" and "equality" and usually means narrowing "equality" to a cookie-cutter approach of treating every person identically. An analysis sponsored by the American Library Association (ALA) emphasizes that equality underlies policies of uniform distribution while equity informs affirmative action and other policies that Americans are likely to think of as unfair.[56] This analysis concludes that, to pursue access for all, libraries need to pursue both equality and equity, which will ensure not only that resources are available to all but that there will also be assistance to overcome barriers some face because they lack, for example, internet access or English language proficiency.[57] With an apparent need to explicitly state commitments to universal opportunity but also to affirmative investments in reaching those who face disadvantages, the ALA reflects the assumption that equality and equity involve different strategies and commitments.

Perhaps "equity" rather than "equality" signals a major increase in the scale of social changes imagined and needed, even though some approach massive change through notions of equality. Philosopher Brian Barry has notably argued that true equal opportunity requires changes in structures, investment, and reallocation of resources—both income and wealth—through taxes and transfers to bring about and sustain similar resources for all.[58] Further, in Barry's view, governments should take steps to assure the provision of housing, as well as sufficient quality of education and health services, so individuals can grasp other opportunities in society.[59]

These arguments are controversial.[60] They can, nonetheless, be made in terms of equality as well as in terms of equity. Treating people the same when there are differences in their circumstances is not equality; for Barry, equality demands changing the circumstances to increase the likelihood of more equal outcomes. Equality in this view requires avenues for "leveling the playing field" and also calls for persistent checking on what

women and children with the effect of reinforcing, perpetuating, or exacerbating disadvantage); R v. Kapp, 2008 SCC 41 (finding legally protected advantages for Indigenous fishing rights compatible with the Charter of Fundamental Rights and Freedoms despite an antidiscrimination clause). For a critique of Canadian equality jurisprudence, see Judy Fudge, *Substantive Equality, The Supreme Court of Canada, and the Limits to Redistribution*, 23 S. Afr. J. Hum. Rts. 235 (2007).

56 Nancy Kranich, *Equality and Equity of Access: What's the Difference?*, Am. Libr. Ass'n (Mar. 3, 2005), https://www.ala.org/advocacy/intfreedom/equalityequity.

57 *Id.*

58 Barry, *supra* note 54.

59 *Id.*

60 *See, e.g.*, Arneson, *supra* note 54.

actually works.[61] Perhaps underscoring the continuing resonance of "equality," however, an education data communication expert argues that equity and equality are "not equal"—and in so doing, she resorts to equality to make the argument.[62]

II. RECLAIMING DISTINCTIONS: COMPARING INDIVIDUALIZED, STRUCTURAL, AND SAMENESS CONSIDERATIONS

The contrast between equal policies and policies that lead to equality is well known.[63] People have different needs and are situated differently in society and in history. Scholars and policy makers have long attended to the difference between treating people equally and treating them in ways that serve them equally. Another related contrast is "equality of opportunity" versus "equality of results." John Rawls influentially invited society to agree to "regard the distribution of natural talents as a common asset and to share in the distribution of the benefit whatever it turns out to be."[64] His work generated debate over incentives, desert, and distribution, and recent critics emphasize how the "liberal egalitarianism" crystallized in Rawls's work cabined options and failed to anticipate developments such as mass incarceration and post-industrial capitalism.[65] The invocation of equity instead of equality suggests this distinction but also points to further contrasts.[66] This section maps contrasting concepts signaled by current uses of "equality" and "equity," while it also develops strengths and weaknesses of the concepts for purposes of political, legal, and policy efforts.

61 Miranda Parker & Mark Guzdial, *Equity Versus Equality: A Proposed Study of Issues of Justice in Computer Science Education* (Workshop on Exploring Social Justice, Design, and HCI, Chicago, 2016).

62 *See* Mann, *supra* note 34.

63 *See*, *e.g.*, James S. Fishkin, Justice, Equal Opportunity, and the Family (1983); Martha Minow, Marking All the Difference: Inclusion, Exclusion, and American Law (1990); Douglas Rae, Equalities (1981); T.M. Scanlon, *The Diversity of Objections to Inequality*, *in* The Difficulty of Tolerance: Essays in Political Philosophy 202 (2003); Michael Walzer, Spheres Of Justice: A Defense Of Pluralism And Equality (1983).

64 John Rawls, A Theory of Justice 7 (1971).

65 Katerina Forrester, In The Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy 252 (2019); Tommie Shelby, Dark Ghettos: Injustice, Dissent, and Reform (2018).

66 There are yet further distinctions. For example, Rae explores differences between absolute and relative equalities, Rae *supra* note 63, at 104–29. Scholars also explore the difficult relationship between respect for groups through valuing pluralism—in culture, religion, and other social differences—and respect for individuals regardless of group. *See* Walzer, *supra* note 63; Heather Gerken, *Second-Order Diversity*, 118 Harv. L. Rev. 1099 (2005); Iris Marion Young, Justice and the Politics of Difference (1990); Robert L. Simon, *Pluralism and Equality: The Status of Minority Values in a Democracy*, *in* NOMOS XXXII Majorities and Minorities 207 (John W. Chapman & Alan Wertheimer eds., 1990); Will Kymlicka & Ian Shapiro, *Introduction*, *in* NOMOS XXXIX Ethnicity and Group Rights (Ian Shapiro and Will Kymlicka eds., 1997).

This chart is an effort to distinguish equality and equity as emerging in some current parlance:

Equality	Treat everyone the same; resist group classifications	Focus on opportunity going forward	Ensure fairness, neutrality, impartiality	Evenhanded treatment and provision, whether leveling up or leveling down
Equity	Treat each individual differently based on needs and backgrounds OR identify and address different needs associated with different groups	Focus on past and present uneven playing fields and distribution of advantages and disadvantages	Reallocate resources and rules to overcome existing barriers and differences in outcomes and representation of particular groups	Substantive (minimal?) guarantees OR Reduce range of variance in access to resources at the top as well as at the bottom

Although, as detailed earlier, there exist numerous possible meanings, this chart treats "equality" to mean paying no attention to differences among people and "equity" as directing attention to uneven playing fields and conscious remedial efforts. This effort to sort meanings exposes the choices about strategies that are signaled by at least some uses of "equity": focus on each individual's unique needs or design group-based reforms. Whether called "equality" or something else, approaches that call for uniformity or identical treatment, regardless of individual circumstances, can be disappointing or even perverse. This is the basic insight at least as old as Aristotle's notion of justice as treating likes alike—and correlatively, treating un-likes unalike. A building fails to be open to all if it can be entered only through a stairway and some potential users rely on wheelchairs.[67] Teaching all students in English disadvantages those who do not speak or read it.[68] Taxing everyone the same amount neglects the different meanings of the marginal dollar for people in different income brackets.

67 *See* Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law (1990).

68 Lau v. Nichols, 414 U.S. 563 (1974).

Even "sameness" as a factor in equal treatment is problematic. "The same as what?" is the inevitable question. If men are the point of reference, women can seem "different" and not entitled to similar treatment; if able-bodied people are the assumed reference point, then ensuring access and accommodation for persons with disabilities is not required by "same" treatment. Yet these familiar problems with "sameness" reflect the simple failure to expose as unjustified the point of reference. Such "default" points of reference lack rationales and entrench prior privileges and advantages. They also obscure the way that the very traits deemed as "same" or "different" may rest on faulty stereotypes.

One revered touchstone for "sameness" expected by equal treatment is the Golden Rule. Across cultures and times, the directive to "do unto others as you would have them do unto you" answers "the same as yourself" when it comes to how another person should be treated. This same guidepost could instruct decision-makers and direct resistance to any temptations to diminish another person. Putting to the side the difficulty of imagination when decision-makers creating law and rules do not have a specific person before them, the Golden Rule itself receives criticisms for failing to acknowledge that the others may not have wants or desires identical to yours. As George Bernard Shaw put it, "Yet do not do unto others as you would that they should do unto you. Their tastes may not be the same."[69] This objection might be overcome if the decision-maker works to learn the neighbor's desires and preferences and can craft the treatment accordingly. To treat others as they want to be treated might be understood as applying the golden rule to the golden rule, correcting the risk of missing the wants and needs of others.[70]

Another problem with the "sameness" element of "the same treatment" comes with the risk of "leveling down" to worse treatment in order to achieve sameness. When a company or government provides maternal leave to mothers, a father's objection of inequality could be resolved by ending maternal leave rather than by expanding to parental leave. "Leveling down" rather than "leveling up" exposes what Peter Westen dubbed the "empty idea of equality"; equality, at least in some interpretations, lacks any substantive commitments and needs external values to supply content.[71] Commitments to recognition, dignity, or

69 George Bernard Shaw, Man and Superman 227 (1903).

70 *See* Jeffrey Wattles, The Golden Rule 6 (1996); Jouni Reinikainen, *The Golden Rule and the Requirement of Universalizability*, 39 J. Value Inquiry 155 (2005); Daniel Rönnedal, *The Golden Rule and the Platinum Rule*, 49 J. Value Inquiry 221 (2015).

71 Peter Westen, *The Empty Idea of Equality*, 95 Harv. L. Rev. 537 (1982). Dean Erwin Chemerinsky defends equality as necessary but not sufficient. Erwin Chemerinsky, *In Defense of Equality: A Reply to Professor Westen*, 81 Mich. L. Rev. 575 (1983). On leveling up and leveling down, see Larry Temkin, Inequality 256 (1993); Deborah L. Brake, *When Equality Leaves Everyone Worse Off: The Problem of Leveling Down in Equality Law*, 46 Wm. & Mary L. Rev. 513 (2004); Louis Michael Seidman, *The Ratchet Wreck: Equality's Leveling Down Problem* (2020), Scholarship @ Georgetown Law, https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3348&context=facpub.

comparable outcomes complement an abstract notion of treating likes alike. The U.S. Equal Pay Act, for example, calls for equal pay for equal work, but its users encounter job names and practices that can obscure what makes work similar enough to be considered equal. Courts and agencies have concluded that the work need not be identical but instead substantially the same in skill level, effort, and responsibility at the same establishment.[72] "Equal pay" is the phrase for the legal norm, but its application requires looking beyond specific categories to determine who should be treated comparably. Even more vigorously attached to a substantive picture of desirable outcomes, Canadian jurisprudence specifies within its equality protections that services and benefits are required to enable equal outcomes despite unequal prior conditions faced by different individuals and groups.[73]

Yet what should be compared—what elements of people's backgrounds, positions, needs, and desired outcomes—remains a problem. Nobel Prize–winning economist and philosopher Amartya Sen memorably asked, "equality of what?"[74] Even using a utilitarian notion of marginal utility runs into the problem that different individuals have different utility functions, different intensity of needs, and different situations.[75] Addressing what it would take for different people to have the same capabilities—abilities to exercise freedoms and achieve desires—would be one avenue for surmounting these differences, but even this approach, notes Sen, remains embedded in particular cultures which themselves vary.[76]

This line of reasoning suggests that the uniqueness of each person is the necessary focus for any consideration of equal or unequal treatment. That view increasingly matches U.S. constitutional law that has elevated protections against classification on the basis of race or gender over remedying historic and ongoing burdens and barriers based on those characteristics.[77] There is powerful appeal in resisting the use of classifications that have been used to subordinate some and elevate others—and to resist reducing an individual to that particular trait. A related idea is "formal equality," which insists on general rules and practices without reference to group or individual characteristics.

72 29 U.S.C. § 206; *Equal Pay for Equal Work* U.S. Dep't of Lab., https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/internal/policies/equal-pay-for-equal-work.

73 *Jordan's Principle: Substantive Equality Principles* Gov't of Can., https://www.sac-isc.gc.ca/eng/1583698429175/1583698455266; Claire L'Heureux-Dubé, *It Takes a Vision: The Constitutionalization of Equality in Canada*, 14 Yale J.L. & Feminism 363 (2002), https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1197&context=yjlf.

74 Amartya Sen, Equality of What?, Tanner Lecture on Human Values at Stanford University (May 22, 1979), *in* Oxford Poverty and Human Development Initiative 198, https://www.ophi.org.uk/wp-content/uploads/Sen-1979_Equality-of-What.pdf.

75 *Id.* at 202, 208, 215–16.

76 *Id.* at 219.

77 Jack M. Balkin & Reva B. Siegel, *The American Civil Rights Tradition: Anticlassification or Antisubordination?*, 58 U. Miami L. Rev. 9 (2003).

Human language and perception inevitably simplify and reduce the massive variety of experiences. Human languages use words to stand in for complex realities and provide descriptions of perceptions that select some qualities over others.[78] So does law. Even in describing the uniqueness of an individual, words connect that individual's traits—height, interests, personality—to features of other people. The assertion of a legal claim of unequal treatment invariably requires expressing a group classification, drawing an individual into a subset of people defined by a shared trait—by race, ethnicity, language used at home, gender, age, appearance, or other personal characteristic. The reduction of an individual to some characteristics rather than others reflects the inevitably limited nature of human words.

When framed as a focus on the merit of a unique individual, allocation of rewards, opportunities, or markers of success obscure the ongoing impact of group membership. Whether stressing the qualities associated with a group of people—defined by scores above a threshold on a particular kind of test or by membership in a group such as descendants of persons enslaved in the United States—notions of merit depend on rankings and categorizations. Michael Sandel's challenge to this conception of merit exposes the danger of attributing success to the qualities embodied in an individual rather than to luck.[79] This attribution implies credit and blame in ways that neglect chance and history and contribute to the disparagement and degradation of people explicitly or implicitly identified through reference to types of prior experiences.

The call for "same treatment" could attend to as many characteristics about an individual as possible by locating an individual in smaller and smaller subsets, with each subset defined as those sharing to include only those with specific multiple characteristics. "Same treatment" then would be required for all in a shared subset. But how are individualized needs and situations to be assessed, and by whom? How are issues of bias or variations in the eye of the beholder to be avoided? Variations in the application of federal criminal sentences by judges produced charges of bias and unfairness, which in turn prompted standardized guidelines, which were then challenged as violating an individual's right to the individualized decision-making of a jury.[80] Analysis of past data can inform algorithmic pretrial tools that assess the risk that an individual may fail to show up at their trial—and reduce the variations in bail decisions made by individual judges—but such tools in turn

78 *See* Minow, *supra* note 67.

79 Michael J. Sandel, The Tyranny of Merit: What's Become of the Common Good? (2020). Others would give greater emphasis to the impact of racial hierarchy, winner-take-all economic structures, and the intergenerational stickiness of social and economic status. See the symposium in this issue of the *American Journal of Law & Equality*.

80 *See* United States v. Booker, 543 U.S. 220 (2005). For ongoing debates over even the nonmandatory, advisory use of the sentencing guidelines, see Henry D. Stegner, *An End to Arbitrary and Capricious Federal Sentencing Guidelines*, 53 Idaho L. Rev. 739 (2017).

reflect biases of past decision-makers.[81] Data-driven risk tools reflect policies about where police are stationed and the biases of the police themselves.[82]

For a time, individualized exemptions and accommodations characterized the federal constitutional approach to the religious exercise claims of individuals objecting to burdens from governmental policies, until the Supreme Court ruled otherwise, given the cost of such accommodations and the jeopardy to effective, uniform rules. In *Employment Division v. Smith*, the Supreme Court decided that neutral rules of general applicability that happen to burden the religious practices or beliefs of individuals do not demand governmental accommodation, which could undermine the possibility of any general rule.[83] Writing for the Court's majority, Justice Scalia reasoned that the requirement of individualized accommodation would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind, including compulsory military service; the payment of taxes; health and safety regulation, such as manslaughter law, child neglect laws, compulsory vaccination laws, drug laws, and traffic laws; social welfare legislation, such as minimum wage laws, child labor laws, animal cruelty laws, and environmental protection laws; and laws providing for equality of opportunity for people of all races.[84]

Congress responded with the Religious Freedom Restoration Act, seeking to restore the individualized accommodation approach, but the Court rejected the law as exceeding Congress's power, although the approach survives under some state statutes and in religious organizations' challenges to land use actions and religious exercise claims by incarcerated persons.[85] Recent calls to overturn the *Smith* case put the entire question back in play.[86]

81 *See* Chelsea Barabas et al., *Interventions Over Predictions: Reframing the Ethical Debate for Actuarial Risk Assessment*, Proc. Mach. Learning Rsch., https://arxiv.org/pdf/1712.08238.pdf; Jon Kleinberg et al., *Human Decisions and Machine Predictions*, 133 Q.J. Econ. 237 (2018).

82 David G. Robinson & Logan Koepke, *Civil Rights and Pretrial Risk Assessment Instruments*, Safety & Just. Challenge (Dec. 2019), https://www.safetyandjusticechallenge.org/wp-content/uploads/2019/12/Robinson-Koepke-Civil-Rights-Critical-Issue-Brief.pdf.

83 Employment Div. v. Smith, 494 U.S. 872 (1990).

84 *Id.*

85 *See State Religious Freedom Restoration Acts*, Nat'l Conf. of State Legislatures, https://www.ncsl.org/research/civil-and-criminal-justice/state-rfra-statutes.aspx (last visited July 21, 2021); *see also Religious Land Use and Institutionalized Persons Act*, U.S. Dep't of Just., https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act (last visited July 21, 2021); The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. (2000). This statute is narrowly crafted to match prior Supreme Court decisions and, hence, comports with congressional power to "enforce" the Fourteenth Amendment. *See* Cutter v. Wilkinson, 544 U.S. 709 (2005).

86 See Michelle Boorstein, *Religious Conservatives Hopeful New Supreme Court Majority Will Redefine Religious Precedents*, Wash. Post (Nov. 3, 2020), https://www.washingtonpost.com/religion/2020/11/03/supreme-court-religious-liberty-fulton-catholic-philadelphia-amy-coney-barrettt/ (analyzing *Fulton v. City of Phila.* and related challenges).

Individualized accommodations can be expensive to design and to implement. In some contexts, such accommodations and resulting costs may defeat the overall policy goal. For example, devising individualized assessments of the needs of individuals following natural disasters may require so much time and expense that aid would not be available to people in those emergency circumstances. In such situations, uniform checks may be better than devising tailored support. Similar issues could arise with pandemic stimulus checks from the government, if the individualization is based on adjusted gross income, because that measure excludes vast variations in individuals' wealth and family circumstances. But getting the checks out quickly may be more valuable and meaningful to those with urgent needs than fitting the amounts to the actual needs. The expressive impact of universal benefits, as opposed to individualized ones, is another factor, however, to consider.[87] An across-the-board retirement age avoids potentially more hurtful judgments about a specific person.[88]

Besides costs, individualized tailoring means disuniformity—in violation of at least some notions of fairness. Compare, though, issues of costs or disuniformity with the alternative of one-size-fits-all treatments that can systemically disadvantage or burden members of minority or marginalized groups. Case-by-case accommodations—such as those that have been undertaken for years in the contexts of issues concerning members of religious or racial minorities or persons with disabilities—make all the difference for the individuals involved. But do such individualized accommodations alter systemic biases in norms and practices? Indirectly and over time, there may be change, but individualized accommodations are neither targeted nor well designed to tackle structural changes in rules, practices, and attitudes that exclude or burden some people based on their needs, identities, or backgrounds. "Systemic racism" builds different treatments of people based on their perceived race into the patterns of practices and rules used in laws, institutions, and people's unconscious and conscious acts. Individualized responses may well leave these patterns in place. Overcoming blind spots may address only exceptional issues or problems for individuals rather than structural failures calling for change.

It is in this vein that one of the most cogent statements contrasting equality and equity highlights different aspirations for individuals from aspirations for society as a whole. Christopher James of the W. Haywood Burns Institute explained,

> I am not saying that equality isn't our ultimate goal. I am simply saying that to start treating me, as a Black person, "the same as everyone else" at this point in history will not go far enough in terms of achieving true equality. As far as racial justice is con-

87 Samuel R. Bagenstos, *Universalism and Civil Rights (and Notes on Voting Rights after* Shelby), 123 Yale L.J. 2838 (2014).

88 *See* Fred Schauer, Profiles, Probabilities, and Stereotypes (2006).

> cerned, equality should be the interpersonal standard. That is, on an individual basis, we should all treat each other the same regardless of race. However, on a systemic level (including as an individual acting in an official capacity within systems, justice or otherwise), the standard must be equity.[89]

If systemic or structural change becomes the priority meaning for "equity," at least one more fork in the road appears. Should reform not only overcome disadvantages but also remove advantages—not only ensure basic minimal access for all, but also halt disparities in resources or privileges of those at the top? Another version of the cartoon of children trying to see a ball game over a fence removes the box used by the tallest child, gives one box for the middle-sized child, and multiple boxes for the smallest child, who then towers over the others and gets the best view.[90] Translated to actual policy, one could argue for reallocating the strongest teachers from classes for the most advantaged students to classes for the most disadvantaged students, in contrast to union contracts and school practices that reward the best teachers with assignment to advanced or "gifted" students. This, of course, would potentially face intense opposition from teachers and from parents of advantaged students. And it would be difficult to know where to stop with such an effort. Kurt Vonnegut's dystopic short story "Harrison Bergeron" imagines a world in which amendments to the U.S. Constitution dictate that all Americans are fully equal and disallows anyone from being smarter, better looking, or more physically able than anyone else. Enforcement of the "equality laws" forces citizens to equip themselves with disabling devices, including an earpiece radio that blares loud sounds to disrupt the thoughts of intelligent people and heavy weights that burden the strong or athletic.[91] And, to continue the ballgame metaphor, removing and adding boxes in front of the fence does nothing to alter or remove the fence itself.[92]

89 MacArthur Foundation, Safety and Justice Challenge Exchange, Post by Christopher James (Mar. 4, 2021), https://sjcexchange.org/communities/community-home/digestviewer/viewthread?GroupId=67&MessageKey=a169ca9b-ede9-43e5-a245-59fd695d695a&CommunityKey=11457db5-8e01-4936-a751-b71316e003c1&tab=digestviewer&ReturnUrl=/sjcexchange/participate/allrecentposts.

90 *See* Google, https://www.google.com/search?q=equality+vs+equity&rlz=1C1CHBF_enUS832US832&tbm=isch&source=iu&ictx=1&fir=OT5xzuGhtpEewM%252COos-SGIo6maNjM%252C_&vet=1&usg=AI4_-kRyPxRmhE0DIZolwjsa11NI6dX_Qw&sa=X&ved=2ahUKEwij4I7B8IfuAhUmEVkFHYmgCpkQ9QF6BAgIEAE#imgrc=OT5xzuGhtpEewM&imgdii=JdNU0IJx7pwc7M.

91 Kurt Vonnegut, *Harrison Bergeron, in* Welcome to the Monkey House (1968) (reprinting story published in October 1961 in *The Magazine of Fantasy and Science Fiction*).

92 *See supra* at note 31 (describing versions of the cartoon with a chain-link fence), https://www.google.com/imgres?imgurl=http%3A%2F%2Fstatic1.squarespace.com%2Fstatic%2F56e8182ba3360ced7374b83b%2Ft%2F5cff1b41c23db700017bede2%2F1560222542076%2Fequity.jpg%3Fformat%3D1500w&imgrefurl=https%3A%2F%2Fwww.bethanyunitedchurch.ca%2Fministers-blog%2F2019%2F6%2F11%2Fnot-always-fair&tbnid=bd19bhEfzJvMNM&vet=10CAMQxiAoAGoXChMIkNugxPCH7gIVAAAAAB0AAAAAECo..i&docid=r_2EmItG-05abM&w=300&h=225&itg=1&q=equality%20vs%20equity&ved=0CAMQxiAoAGoXChMIkNugxPCH7gIVAAAAAB0AAAAAECo. Another cartoon compares "equality" (depicting people of different sizes and one who uses a wheelchair all given bicycles

Redressing the disadvantages of some may indeed involve redistributing resources in ways that expose trade-offs that affect others. The Canadian Supreme Court rejected challenges, posed on equality grounds, to granting First Nations (indigenous) groups the power to designate who can fish for a twenty-four-hour period in a particular river while excluding others from doing so.[93] Over one dissenting vote, the Court reasoned that the equality guarantees of the Charter of Rights and Freedoms do not prevent an ameliorative program aimed at combating disadvantage, even if the effect is to disadvantage others.[94] The promotion of equality entails the promotion of a society in which all are secure in the knowledge that they are recognized by law as human beings equally deserving of concern, respect, and consideration.[95] Unanswered by reference to either "equality" or "equity" is precisely when and how much promotion of respect for each individual may warrant burdens, costs, or sacrifices.[96]

Also unclear is at what point in time and by whom are the approaches of either equality or equity to be pursued—and once adopted, what then follows? Any given moment of assessment (e.g., standardized testing being used for admission to selective schools) inevitably reflects past opportunities and benefits accorded to individuals at least as much as it reflects individual talents and knowledge. As economist Thomas Sowell noted,

> Some years ago, for example, there was a big outcry that various mental tests used for college admissions or for employment were biased and "unfair" to many individuals or groups. Fortunately, there was one voice of sanity—David Riesman, I believe—who said: "The tests are not unfair. LIFE is unfair and the tests measure the results."[97]

What historical moments are right to use for identifying and remedying life's unfairness? And would such remedies require perpetual adjustment and revision? If policies seeking to redress life's unfairnesses redistribute resources in 2025, should the results be revisited and revised in 2030? Unfortunately, such questions pose difficult normative and practical issues. For example, computer scientists calling for a study of different classroom interventions assume the relevant frame for the "Veil of Ignorance" (the thought experiment devised by philosopher John Rawls for designing a just world, under which those imagining the ideal

of the same size), and "equity" (showing individuals with wheeled vehicles that fit their size and needs). *See* EmbraceRace, *Because Treating People Fairly Often Means Treating Them Differently*), Facebook (Apr. 21, 2018), https://www.facebook.com/weembracerace/posts/1899951163363071?comment_id=1904110452947142.

93 R v. Kapp, [2008] S.C.C. 41 (Can.) https://scc.lexum.umontreal.ca/en/2008/2008scc41/2008scc41.html.

94 *Id.*

95 *Id.*

96 *See* Fiss, *supra* note 53, at 8–9, 25.

97 Thomas Sowell, *The Fallacy of Fairness*, Creators Syndicate (Feb. 8, 2010), https://www.creators.com/read/thomas-sowell/02/10/the-fallacy-of-fairness. *See generally* Thomas Sowell, Intellectuals and Society (2012).

world would not know their social position, identity, or status) is right now and the relevant actor is the teacher or department.[98] But John Rawls and his followers treat the "Veil of Ignorance" as a thought experiment to draw people out of current times, places, and biases in order to build society from the ground up. The hope behind the device is to incline toward just designs, as I may be more scrupulous in cutting equal pieces of cake if we do not know which piece will go to you and which to me. The "Veil of Ignorance" has an entirely different meaning if it is meant to disallow noting and acting on the differences between people in setting up computer science classrooms in 2021 instead of as a thought experiment used prior to devising ground rules for society in general. Strikingly, when used as Rawls used it, the "Veil of Ignorance" thought experiment would lead people to agree to assure that all individuals have the same rights and opportunities while also, at every junction, committing to allocating social and economic resources to benefit those with the least advantages.[99]

Thus, "equality" focused on "same treatment" can be critiqued as lacking any substantive content, failing to specify or even understand what should be the same across people, and focusing on group classifications rather than on social hierarchies. "Equity" can be criticized for shifting unreviewable power to decision-makers to decide which individual differences deserve what kinds of treatment, for raising costs and difficulty in allocative decisions, for forcing a choice between ever more individualized judgments versus policies intended to make structural changes based on group characteristics, and for inspiring measures to redistribute resources and rewards for some individuals "at the top" rather than ensuring basic minimum benefits for all. Yet, as already suggested, the terms "equality" and "equity" can each give rise to versions of these critiques. These two terms may be entering the status of "essentially contested concepts."[100] Walter Bryce Gallie offered this phrase to refer to concepts that secure widespread endorsement but also expansive disagreement over their proper uses, disagreements that "cannot be settled by appeal to empirical evidence, linguistic usage, or the canons of logic alone."[101] Indeed, the terms are often used for overlapping or interchangeable meanings. Clarity about goals and a shift from abstractions to concrete problems might help.

98 Parker & Guzdial, *supra* note 63. *See* Univ. of Tex. McCombs Sch. of Bus., *Veil of Ignorance*, Ethics Unwrapped, https://ethicsunwrapped.utexas.edu/glossary/veil-of-ignorance (last visited July 21, 2021).

99 *See* Rawls, *supra* note 64; John Rawls, *Justice as Fairness*, 67 Phil. Rev. 164 (1958); *see also* Ben Davis, *John Rawls and the "Veil of Ignorance," in* Introduction to Ethics 92–97, https://open.library.okstate.edu/introphilosophy/chapter/john-rawls-and-the-veil-of-ignorance/.

100 Gallie himself repeatedly revised his own discussions of this term regarding disputed concepts. Walter Bryce Gallie, *Essentially Contested Concepts*, 56 Proc. Aristotelian Soc'y 167 (1956); Walter Bryce Gallie, *Art as an Essentially Contested Concept*, 6 Phil. Q. 97 (1956); Walter Bryce Gallie, *Essentially Contested Concepts*, *in* Philosophy and the Historical Understanding 157 (1964).

101 John N. Gray, *On the Contestability of Social and Political Concepts*, 5 Pol. Theory 331, 334 (1977).

III. UNDERLYING GOALS, CONCRETE SITUATIONS

Behind both "equality" and "equity" are underlying goals of fairness, justice, and respect for individual dignity. Historic injustices and ongoing patterns of poorly distributed economic and political power, along with conscious and unconscious bias toward group characteristics, permeate laws, policies, and practices in ways that impede or stymie those goals. "Equity" in current parlance offers ways to achieve equality by either meeting individual needs or producing alterations of entrenched patterns impairing equality.

Canadian jurisprudence offers a promising approach that joins both through the idea of "equality of condition, not just equality of opportunity."[102] Also dubbed "substantive equality," this notion proceeds with the recognition that people start from different positions, so achieving equality requires attention to people's actual positions and staring points. Hence, "[s]ubstantive equality seeks to address the inequalities that stem from an individual's particular circumstances, to help put them at the same position and give them the same opportunities as others."[103] This approach rejects a ban on group classifications and assistance programs intended to remedy exclusions or to relieve hardship or economic disadvantage.[104]

The central commitment of equality is to treat likes alike; its corollary finds inequality in treating those differently situated as if they are situated the same way. Something has gone seriously wrong if commitment to "equality" prevents efforts to level the playing field, to overcome barriers to opportunity, or to enable those who are differently situated to grasp the same opportunities. It is that "something gone wrong"—such as the U.S. Supreme Court's elevation of anticlassification over any other dimensions of equal protection and antidiscrimination—that probably explains the growing interest in "equity." Something has indeed gone wrong if the starting point for testing equal opportunity or color blindness requires ignoring how past opportunities and race consciousness have already produced systemic barriers to opportunity and neutrality.[105]

102 William Little, Introduction to Sociology (2nd Canadian edition, 2013), https://opentextbc.ca/introductiontosociology2ndedition/chapter/chapter-9-social-inequality-in-canada/. "Equity of condition" does not mean a permanent commitment to identical outcomes as much as to an effort to make "equal opportunity" genuine and not rigged based on past privileges and disadvantages. Canadian law reflects contributions by many, notably including Judge (later Justice) Rosie Abella, *see supra* note 58.

103 Little, *supra* note 102.

104 Hilary Page, *Formal Equality vs. Substantive Equality: When Equality Doesn't Mean Equal Treatment*, SpringLaw: Emp. & Hum. Rts. L. Can. (Feb. 26, 2020), https://www.canadaemploymenthumanrightslaw.com/2020/02/formal-equality-vs-substantive-equality-when-equality-doesnt-mean-equal-treatment/.

105 *See* Richard Reeves, Dream Hoarders: How the American Upper Middle Class Is Leaving Everyone Else in the Dust, Why That Is a Problem, and What to Do About It (2017); Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017); Raj Chetty et al., *Race and Economic Opportunity in the United States: An Intergenerational Perspective*, 135 Q.J. Econ. 711 (2020), https://doi.org/10.1093/qje/qjz042; Larry DeWitt, *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act*, 70 Soc. Sec. Bull. (2010), https://www.ssa.gov/policy/docs/ssb/v70n4/v70n4p49.html; Michael

Something has gone terribly wrong when the terms of discussion prevent us from seeing how all are harmed by injustice, racism, and unfairness—and all would benefit from redressing these wrongs.[106]

Maintaining discussion at an abstract level, though, will not advance an understanding of the choices and priorities lying ahead for schools, employers, and other actors in positions to address these issues. Here are a few examples of concrete problems. They are offered to identify issues that cannot be resolved by reference to the debates over equality vs. equity and that need careful thought and engagement.

In educational settings, recognizing differences in the backgrounds, abilities, and learning styles of individuals corresponds with the goals of schools, whether couched as "equal opportunity" or "equality." Still, concrete policy issues expose genuine choices and conflicts. Take school finance. Per-pupil expenditures in any given district can be calculated as averages, but legal rights for students with disabilities and legal entitlements for schools with high proportions of low-income students bring more resources for those students than for others. "Equity" might be a name for these efforts to bring more resources to students with greater needs. Yet, the current structures of school finance dictate that most of the resources are generated by local property taxes, so differences in the amounts raised and spent vary by community—even neighboring ones—and efforts to challenge resulting differences in expenditures per child have had at best mixed results. In addition, the taxes on local communities can be compared in terms of amounts generated, reflecting property values, or tax rates. Which should be the right point of comparison to achieve the goal, whether denoted equality or equity? What is to be compared for the purposes of equality—monetary investments, community tax effort, or student achievement measures?

In the United States criminal justice system, both within and across jurisdictions, the disparate outcomes based on the race of the defendant are notorious. But what about comparisons in terms of the race of the victim?[107] Courts increasingly use algorithmic tools to predict likely flight risks before trial, but critics show how the underlying data informing the algorithmic scores replicate or exacerbate racial disparities—for example, in the use of prior arrest records, which track decisions about where police are sent—and other factors

Heller & James Salzman, *Opinion: America's Ultra-Wealthy Have Pulled Off a Brilliant Heist—in South Dakota*, Wash. Post (Mar. 19, 2021), https://www.washingtonpost.com/opinions/2021/03/19/we-need-rein-billionaires-start-with-south-dakota/; Thomas Wilson Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 Ala. L. Rev. 1 (2014); Andre M. Perry et al., *The Devaluation of Assets in Black Neighborhoods: The Case of Residential Property*, Brookings Inst. (Nov. 27, 2018), https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/.

106 *See* McGhee, *supra* note 14.

107 *See* Randall Kennedy, Race, Crime, and the Law (1998).

correlated with race.[108] Even deeper issues of equity and inequality involve income and wealth disparities in the ability of individuals to pay bail and hence avoid pretrial detention. When California recently faced a Hobson's choice—to replace the cash bail system with algorithmic risk tools—the defects in both options stood in the way of equity, equality, and fairness. Perhaps greater fairness would emerge only by rejecting both algorithmic risk tools about defendants and the system of cash bail.[109] Fairness, justice, and respect for individual dignity call for something better, whether called "equal protection of the law" or "equity." Other alternatives to pretrial detention include pretrial services—ensuring access to jobs, housing, and counseling[110]—or turning the tables and applying algorithmic risk scores to police officers.

One timely issue involves the allocation of scarce COVID-19 vaccine shots. In debating the priorities for administering vaccines, philosopher Peter Singer noted that the criterion of greater risk would suggest, based on evidence of risk, giving priority to people who are African American and Latinx ahead of those of the same age who are white or Asian. But, he notes that one proposal draws on the fact that members of racial and ethnic minorities are underrepresented among those who are older than 65 and recommends lower priority to that entire age group and higher to younger "essential workers." Surely contrary to the intention of the idea, the effect of this proposal "would be that more people of racial and ethnic minorities would die, because the higher fatality rate in older people would outweigh their lower share of representation in that age group." Singer explained, and then assessed: "That's absurd. Equity for disadvantaged minorities can't tell us to distribute vaccines in a manner that will mean more deaths in those communities themselves."[111] The problem can generate other specific solutions not illuminated by the discussion of equity versus equality. For example, public safety expert Juliette Kayyem argues for prioritizing vaccines for those who help others—including teachers.[112] The coronavirus relief bill enacted in March 2021 pursues a similar conception. It provides resources to ensure students are connected to the internet after the pandemic showed that so many households were unable to access virtual classrooms from home.[113] Notably, prior allocations of federal

108 Tom Simonite, *Algorithms Were Supposed to Fix the Bail System. They Haven't*, Wired (Feb. 19, 2020), https://www.wired.com/story/algorithms-supposed-fix-bail-system-they-havent/.

109 Nico Savidge, *Prop 25 Failed but California's Fight Over Cash Bail Is Far from Over*, Mercury News (Nov. 12, 2020), https://www.mercurynews.com/2020/11/12/prop-25-failed-but-californias-fight-over-cash-bail-is-far-from-over/.

110 Courtney Lam, *Pretrial Services: An Effective Alternative to Monetary Bail*, Ctr. Juv. & Crim. Just. (2014), https://nicic.gov/pretrial-services-effective-alternative-monetary-bail.

111 *Id.*

112 *Id.*

113 Toluse Olorunnipa & Moriah Balingit, *Biden's Push for Equity Faces Critical Test Amid Shifting Strategies to Open Schools*, Wash. Post (Mar. 14, 2021), https://www.washingtonpost.com/politics/biden-schools-reopening-equity/2021/03/13/e1a457ee-8020-11eb-9ca6-54e187ee4939_story.html.

funds favored predominantly white school districts when compared with nonwhite districts, even when they served roughly the same numbers of students.[114]

The promise of equal protection of the laws was broken from the start of the United States by the Constitution's protections for the institution of slavery. The Civil War and resulting amendments announced a new due process and equal protection of the laws, and they empowered federal enforcement. At times, the nation has seen delivery on the promise of equal protection.[115] But the Supreme Court drastically narrowed the Amendments' scope, and states and private white resistance actively thwarted the Amendments through "Jim Crow" laws mandating racial segregation, lax or nonexistent law enforcement, extralegal violence reinforcing "white supremacy," and retrenchment of judicial action. Despite decades of social and legal movements to overcome legally enforced racial subjugation, the nation remains enmeshed in patterns of racial disadvantage, exclusion, and expropriation, with the mass incarceration and disenfranchisement of African Americans and serious political challenges to birthright citizenship, voting rights, due process, and equal protection of the law. This history is fully documented by Eric Foner, Henry Louis Gates, Jr., and others.[116] Its operations in the psyches and interactions of individuals are also laid bare by the works of scholars, novelists, filmmakers, and memoirists.[117] Different but similarly appalling stories of the failure of the equal protection of the law affect the daily lives of people identified as Asian American, Latinx, sexual or gender minorities, and persons with disabilities.

Many current judicial interpretations and some current political arguments hollow out the concept of equality and sadly lead its natural advocates to disparage it. But what should be discredited are the destructive interpretations, stripping "equal protection" and civil rights from their core meanings. "Equity" may seem to offer a way out, but words alone cannot redeem what political forces undermine. Above all, whatever words are used, the

114 *Id.* ("Predominantly White school districts got $23 billion more in funding than did predominantly non-White districts in 2016, even though they served roughly the same number of schoolchildren, according to EdBuild, an organization dedicated to studying school funding disparities that disbanded last year.").

115 *See* Loving v. Virginia, 388 U.S. 1 (1967) (rejecting laws forbidding interracial marriage as enforcing white supremacy); Brown v. Bd. of Educ., 347 U.S. 1 (1954) (stating that racially separate schooling mandated by law can never be equal); Strauder v. West Virginia, 100 U.S. 303 (1880) (stating that the post–Civil War amendments' purpose was the "securing to a race recently emancipated [all] the civil rights the superior race enjoy").

116 Eric Foner, The Second Founding: How the Civil War and Reconstruction Remade the Constitution (2019).

117 On history and memory, see, for example, Four Hundred Souls: A Community History of African America, 1619–2019 (Ibram X. Kendi & Keisha N. Blain eds., 2021); Isabel Wilkerson, Caste: The Origins of Our Discontents (2020); for films, see, for example, Do the Right Thing (Spike Lee 1989); Get Out (Jordan Peele 2017); I Am Not Your Negro (Raoul Peck 2016) (a documentary film based on James Baldwin's unfinished manuscript *Remember This House*); for memoirs, see, for example, Charles B. Dew, The Making of a Racist: A Southerner Reflects on Family, History, and the Slave Trade (2016); Michelle Obama, Becoming (2018).

concepts and goals should be clear and capable of motivating and guiding the coalitions of people whose beliefs and efforts will be needed to make them real. This means working to disentangle confusions between "equality" and "equity" and embracing the power of both words. Recognizing the unique situation of each person calls for the tailored responsiveness of schools, employers, and providers of health care and social services; manifesting the dignity of each person requires ensuring each receives the same respect and also finds opportunities that are realities. How about embracing equality and equity—and their underlying goals—while concretely tackling the problems surrounding us? Ensure the respect for the dignity of each individual **and** overcome historic and ongoing barriers due to stereotypes, "isms," and compounded exclusions and degradations: defend equal protection of the laws and advance systemic changes while attending to the unique situation of each person. It is a tall order, but it is what law and justice demand, and all the concepts and legal tools available should be used. Both "equality" and "equity" can help illuminate deep problems in human societies, and both offer tools to make a different and better world—if those who share visions of change work together.

Harvard
Business
Review

Diversity And Inclusion

How the Best Bosses Interrupt Bias on Their Teams

by Joan C. Williams and Sky Mihaylo

From the Magazine (November–December 2019)

Lars Leetaru

Summary. Companies spend millions on antibias training each year in hopes of creating more-inclusive—and thereby innovative and effective—workforces. Studies show that well-managed diverse groups perform better and are more committed, have higher collective... **more**

Companies spend millions on antibias training each year. The goal is to create workforces that are more inclusive, and thereby more innovative and more effective. Studies show that well-managed diverse groups outperform homogeneous ones and are more committed, have higher collective intelligence, and are better at making decisions and solving problems. But research also shows that bias prevention programs rarely deliver. And some companies don't invest in them at all. So how can you, as an individual leader, make sure your team is including and making the most of diverse voices? Can one person fix what an entire organization can't?

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Although bias itself is devilishly hard to eliminate, it is not as difficult to *interrupt*. In the decades we've spent researching and advising people on how to build and manage diverse work groups, we've identified ways that managers can counter bias without spending a lot of time—or political capital.

The first step is to understand the four distinct ways bias plays out in everyday work interactions: (1) *Prove it again:* Some groups have to prove themselves more than others do. (2) *Tightrope:* A narrower range of behaviors is accepted from some groups than from others. (3) *Maternal wall:* Women with children see their commitment and competence questioned or face disapproval for being too career focused. (4) *Tug-of-war:* Disadvantaged groups find themselves pitted against one another because of differing strategies for assimilating—or refusing to do so.

The second step is to recognize when and where these forms of bias arise day-to-day. In the absence of an organizational directive, it's easy to let them go unaddressed. That's a mistake. You can't be a great manager without becoming a *bias interrupter*. Here's how to do it.

Picking Your People

Bias in hiring has been extensively documented. In one study, "Jamal" needed eight more years of experience than "Greg" to be seen as equally qualified. Another found that men from elite backgrounds were called back for interviews more than 12 times as often as identical candidates from non-elite backgrounds. Other studies have found that women, LGBT+ candidates, people with disabilities, women in headscarves, and older people are less likely to be hired than their peers.

Fairness in hiring is only the first step toward achieving diversity, but it's an important one. Here are four simple actions that will yield the best candidates by eliminating artificial advantages:

1. Insist on a diverse pool.

Whether you're working with recruiters or doing the hiring yourself, make it clear from the outset that you want true diversity, not just one female or minority candidate. Research shows that the odds of hiring a woman are 79 times as great if at least two women are in the finalist pool, while the odds of hiring a nonwhite candidate are 194 times as great with at least two finalist minority applicants. For example, when Kori Carew launched the Shook Scholars Institute at Shook, Hardy & Bacon, she designed it to bring a diverse mix of students into the law firm and offered career development and mentoring that prompted many of them to apply for summer associate positions.

2. Establish objective criteria, define "culture fit," and demand accountability.

Implicit biases around culture fit often lead to homogeneity. Too often it comes down to shared backgrounds and interests that out-groups, especially first-generation professionals, won't have. That's why it's important to clarify objective criteria for any open role and to rate all applicants using the same rubric. When one insurance company began hiring in this way, it ended up offering jobs to 46% more minority candidates than before. Even if your organization doesn't mandate this approach, ensure that

everyone on your team takes it. Write down the specific qualifications required for a particular position so that everyone can focus on them when reviewing résumés and conducting interviews. For example, when Alicia Powell was managing chief counsel at PNC Bank, she made a point of listing the qualities that would make new team members successful in their roles: proactive in managing risk, self-disciplined, patient, customer focused, and independent. Powell shared this information with the rest of her team and candidates, ensuring that everyone was on the same page. You should hold people accountable in the same way. Waive criteria rarely, and require an explanation for those exceptions; then keep track of long-term waiving trends. Research shows that objective rules tend to be applied rigorously to out-groups but leniently to in-groups.

3. Limit referral hiring.

If your organization is homogeneous, hiring from within or from employees' social networks will only perpetuate that. So reach out to women and minority groups. Google partners with historically black colleges such as Spelman and Florida A&M University and with Hispanic-serving institutions such as New Mexico State and the University of Puerto Rico, Mayagüez. As an individual leader, you can work with the same organizations or recruit from similar ones in your industry or local community.

4. Structure interviews with skills-based questions.

Ask every person interviewed the same questions and make sure that each question directly relates to the desired knowledge and skills you've outlined. Rate the answers immediately—that will allow you to compare candidates fairly on a preestablished rubric and prevent favoritism. You should also use skills assessments: Rather than ask "How comfortable are you with Excel?" say "Here's a data set. How would you find out X?" For more-complex skills, such as project management, pose a problem or a task that candidates are likely to encounter on the job and ask them to describe in detail how they would handle it.

Managing Day-to-Day

Even good leaders sometimes fall into bad habits when it comes to the daily management of their teams. Women report doing about 20% more "office housework." on average, than their white male counterparts, whether it's literal housework (arranging for lunch or cleaning up after a meeting), administrative tasks (finding a place to meet or prepping a PowerPoint), emotional labor ("He's upset—can you fix it?"), or undervalued work (mentoring summer interns). This is especially true in high-status, high-stakes workplaces. Women engineers report a "worker bee" expectation at higher rates than white men do, and women of color report it at higher rates than white women do. Meanwhile, glamour work that leads to networking and promotion opportunities, such as project leadership and presentations, goes disproportionately to white men. When the consultancy GapJumpers analyzed the performance reviews of a tech company client, it found that women employees were 42% more likely than their male colleagues to be limited to lower-impact projects; as a result, far fewer of them rose to more-senior roles.

> **Objective rules tend to be applied less rigorously to in-groups than to out-groups.**

Meetings are another problem area. Research shows that men are more likely than women to dominate the conversation, and that whereas men with expertise tend to be *more* influential, women with expertise tend to be *less* so. Our study of lawyers found that half of women report being interrupted in meetings at a higher rate than their male peers are. Another study found that in meetings that included more men than women (a common scenario), women typically participated about 25% less often than their male coworkers did. Double standards and stereotypes play out whenever diverse identities come together. Is a woman "emotional," or a black man "angry," while a white male is

“passionate”? We once heard from a woman scientist that she was sharply criticized as “aggressive” when she brought up a flaw in a male colleague’s analysis; after that she felt she needed to just “bring in baked goods and be agreeable.” A black tech company executive we know told us about a meeting during which she said little while the only other woman, an Asian-American, said a lot. But she later heard that people thought she had “dominated” the conversation while her Asian-American peer had been “very quiet.”

Unsure whether this sort of thing is happening on your team? Start tracking assignments and airtime in meetings. Use our free online tools to find out which work done by your group is higher- or lower-profile and who’s doing what. For meetings, pay attention: Who’s at the table? Who’s doing the talking? Is someone taking notes when he or she could be leading the conversation? If you find a problematic dynamic, here are some ways to change it:

1. Set up a rotation for office housework, and don’t ask for volunteers.

“I always give these tasks to women because they do them well/volunteer” is a common refrain. This dynamic reflects an environment in which men suffer few consequences for bypassing or doing a poor job on low-value work, while women who do the same are seen as “prima donnas” or incompetent. Particularly when administrative staff is limited, a rotation helps level the playing field and makes it clear that everyone is expected to contribute to office housework. If you ask for volunteers, women and people of color will feel powerful pressure to prove they are “team players” by raising their hands.

2. Mindfully design and assign people to high-value projects.

Sometimes we hear "It's true, I keep giving the plum assignments to a small group—but they're the only ones with the skills to do them!" According to Joyce Norcini, formerly general counsel for Nokia Siemens Networks, if you have only a tight circle of people you trust to handle meaningful work, you're in trouble. Her advice: Reconsider who is capable of doing what these important jobs require; chances are someone not on your usual list is. You may need to move outside your comfort zone and be more involved in the beginning, but having a broader range of trained people will serve you well in the end.

3. Acknowledge the importance of lower-profile contributions.

"Diversity" hires may lag behind their majority-member peers because they're doing extra stuff that doesn't get them extra credit. If your organization truly prioritizes inclusion, then walk your talk. Many bosses who say they value diversity programming and mentorship don't actually take it into account when promotion or comp time becomes available. Integrating these contributions into individual goal setting and evaluating them during performance reviews is a simple start. And don't be afraid to think big: A law partner we know did such a great job running the woman's initiative that the firm begged her to stay on for another year. She said she would if the firm's bosses made her an equity partner. They did.

4. Respond to double standards, stereotyping, "manterruption," "bropriating," and "whipeating."

Pay close attention to the way people on your team talk about their peers and how they behave in group settings. For example, men tend to interrupt women far more often than the other way around; displays of confidence and directness *decrease* women's influence but *increase* men's. If a few people are dominating the conversation in a meeting, address it directly. Create and enforce a policy for interruptions. Keep track of those who drown others out and talk with them privately about it, explaining that you

think it's important to hear everyone's contributions. Similarly, when you see instances of "bropriating" or "whipeating"—that is, majority-group members taking or being given credit for ideas that women and people of color originally offered—call it out. We know two women on the board of directors of a public company who made a pact: When a man tried to claim one of their ideas, the other would say something like "Yes, I liked Sandra's point, and I'm glad you did too." Once they did this consistently, bropriating stopped.

5. Ask people to weigh in.

Women, people of Asian descent, and first-generation professionals report being brought up with a "modesty mandate" that can lead them to hold back their thoughts or speak in a tentative, deferential way. Counter this by extending an invitation: "Camilla, you have experience with this—what are we missing? Is this the best course of action?"

6. Schedule meetings inclusively.

Business meetings should take place in the office, not at a golf course, a university club, or your favorite concert venue. Otherwise you're giving an artificial advantage to people who feel more comfortable in those settings or whose personal interests overlap with yours. Whenever possible, stick to working hours, or you risk putting caregivers and others with a demanding personal life at a disadvantage. Joan once noticed that no mothers were participating in a faculty appointment process because all the meetings were held at 5:30 PM. When she pointed this out to the person leading them, the problem was fixed immediately. This colleague had a stay-at-home wife and simply hadn't thought about the issue before.

7. Equalize access proactively.

Bosses may meet with some employees more regularly than others, but it's important to make sure this is driven by business demands and team needs rather than by what individuals want or

expect. White men may feel more comfortable walking into your office or asking for time. The same may be true of people whose interests you share. When Emily Gould Sullivan, who has led the employment law functions for two *Fortune* 500 retail companies, realized that she was routinely accepting "walking meeting" invitations from a team member who was, like her, interested in fitness, she made a point of reaching out to others to equalize access.

Developing Your Team

Your job as a manager is not only to get the best performance out of your team but also to encourage the development of each member. That means giving fair performance reviews, equal access to high-potential assignments, and promotions and pay increases to those who have earned them. Unfortunately, as we've noted, some groups need to prove themselves more than others, and a broader range of behaviors is often accepted from white men. For example, our research shows that assertiveness and anger are less likely to be accepted from people of color, and expectations that women will be modest, self-effacing, and nice often affect performance assessments. One study found that 66% of women's reviews contained comments about their personalities, but only 1% of men's reviews did. These double standards can have a real impact on equity outcomes. PayScale found that men of color were 25% less likely than their white peers to get a raise when they asked for one. And gender norms stunt careers for women. PayScale found that when women and men start their careers on the same rung of the professional ladder, by the time they are halfway (aged 30–44), 47% of men are managers or higher, but only 40% of women are. These numbers just worsen over time: Only 3% of the women make it to the C-suite, compared with 8% of the men.

Take these steps to avoid common pitfalls in evaluations and promotions:

1. Clarify evaluation criteria and focus on performance, not potential.

Don't arrive at a rating without thinking about what predetermined benchmarks you've used to get there. Any evaluation should include enough data for a third party to understand the justification for the rating. Be specific. Instead of "She writes well," say "She can write an effective summary judgment motion under a tight deadline."

> **Schedule meetings during working hours—or caregivers may be put at a disadvantage.**

2. Separate performance from potential and personality from skill sets.

In-groups tend to be judged on their potential and given the benefit of the doubt, whereas out-groups have to show they've nailed it. If your company values potential, it should be assessed separately, with factors clearly outlined for evaluators and employees. Then track whether there's a pattern as to who has "potential." If so, try relying on performance alone for everyone or get even more concrete with what you're measuring. Personality comments are no different; be wary of double standards that affect women and people of color when it comes to showing emotion or being congenial. Policing women into femininity doesn't help anyone, and—as courts have pointed out—it's direct evidence of sex discrimination. If that's not motivation enough, evaluators can miss critical skills by focusing on personality. It's more valuable, and accurate, to say someone is a strong collaborator who can manage projects across multiple departments than to say "She's friendly and gets along with everyone."

3. Level the playing field with respect to self-promotion.

The modesty mandate mentioned above prevents many people in out-groups from writing effective self-evaluations or defending

themselves at review time. Counter that by giving everyone you manage the tools to evaluate their own performance. Be clear that it's acceptable, and even expected, to advocate for oneself. A simple two-pager can help overcome the modesty mandate and cue majority men (who tend toward overconfidence) to provide concrete evidence for their claims.

4. Explain how training, promotion, and pay decisions will be made, and follow those rules.

As the chair of her firm's women's initiative, one lawyer we know developed a strategy to ensure that all candidates for promotion were considered fairly. She started with a clear outline of what was needed to advance and then assigned every eligible employee (already anonymized) to one of three groups: green (meets the objective metrics), yellow (is close), and red (doesn't). Then she presented the color-coded list to the rest of the evaluation team. By anonymizing the data and pregrouping the candidates by competencies, she ensured that no one was forgotten or recommended owing to in-group favoritism.

All the evaluators were forced to stick to the predetermined benchmarks, and as a result, they tapped the best candidates. (Those in the yellow category were given advice about how to move up to green.) When it comes to promotions, there may be limits to what you can do as an individual manager, but you should push for transparency on the criteria used. When they are explicit, it's harder to bend the rules for in-group members.

CONCLUSION

Organizational change is crucial, but it doesn't happen overnight. Fortunately, you can begin with all these recommendations *today*.

A version of this article appeared in the November–December 2019 issue of *Harvard Business Review*.

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Harvard
Business
Review

Race

How to Promote Racial Equity in the Workplace

by Robert Livingston

From the Magazine (September–October 2020)

Diana Ejaita

Summary. Many White people deny the existence of racism against people of color because they assume that racism is defined by deliberate actions motivated by malice and hatred. However, racism can occur without conscious awareness or intent. When defined simply... **more**

Intractable as it seems, the problem of racism in the workplace can be effectively addressed with the right information, incentives, and investment. Corporate leaders may not be able to change the world, but they can certainly change their world. Organizations are relatively small, autonomous entities that afford leaders a high level of control over cultural norms and

procedural rules, making them ideal places to develop policies and practices that promote racial equity. In this article, I'll offer a practical road map for making profound and sustainable progress toward that goal.

I've devoted much of my academic career to the study of diversity, leadership, and social justice, and over the years I've consulted on these topics with scores of *Fortune* 500 companies, federal agencies, nonprofits, and municipalities. Often, these organizations have called me in because they are in crisis and suffering—they just want a quick fix to stop the pain. But that's akin to asking a physician to write a prescription without first understanding the patient's underlying health condition. Enduring, long-term solutions usually require more than just a pill. Organizations and societies alike must resist the impulse to seek immediate relief for the symptoms, and instead focus on the disease. Otherwise they run the risk of a recurring ailment.

To effectively address racism in your organization, it's important to first build consensus around whether there is a problem (most likely, there is) and, if so, what it is and where it comes from. If many of your employees do not believe that racism against people of color exists in the organization, or if feedback is rising through various communication channels showing that Whites feel that they are the real victims of discrimination, then diversity initiatives will be perceived as the problem, not the solution. This is one of the reasons such initiatives are frequently met with resentment and resistance, often by mid-level managers. Beliefs, not reality, are what determine how employees respond to efforts taken to increase equity. So, the first step is getting everyone on the same page as to what the reality is and why it is a problem for the organization.

But there's much more to the job than just raising awareness. Effective interventions involve many stages, which I've incorporated into a model I call PRESS. The stages, which organizations must move through sequentially, are: (1) Problem awareness, (2) Root-cause analysis, (3) Empathy, or level of concern about the problem and the people it afflicts, (4) Strategies for addressing the problem, and (5) Sacrifice, or willingness to invest the time, energy, and resources necessary for strategy implementation. Organizations going through these stages move from understanding the underlying condition, to developing genuine concern, to focusing on correction.

Let's now have a closer look at these stages and examine how each informs, at a practical level, the process of working toward racial equity.

Problem Awareness

To a lot of people, it may seem obvious that racism continues to oppress people of color. Yet research consistently reveals that many Whites don't see it that way. For example, a 2011 study by Michael Norton and Sam Sommers found that on the whole, Whites in the United States believe that systemic anti-Black racism has steadily decreased over the past 50 years—and that systemic anti-White racism (an implausibility in the United States) has steadily increased over the same time frame. The result: As a group, Whites believe that there is more racism against them than against Blacks. Other recent surveys echo Sommers and Norton's findings, one revealing, for example, that 57% of all Whites and 66% of working-class Whites consider discrimination against Whites to be as big a problem as discrimination against Blacks and other people of color. These beliefs are important, because they can undermine an organization's efforts to address racism by weakening support for diversity policies. (Interestingly, surveys taken since the George Floyd murder indicate an increase in perceptions of systemic racism among Whites. But it's too soon to tell whether those surveys reflect a permanent shift or a temporary uptick in awareness.)

Even managers who recognize racism in society often fail to see it in their own organizations. For example, one senior executive told me, “We don’t have any discriminatory policies in our company.” However, it is important to recognize that even seemingly “race neutral” policies can enable discrimination. Other executives point to their organizations’ commitment to diversity as evidence for the absence of racial discrimination. “Our firm really values diversity and making this a welcoming and inclusive place for everybody to work,” another leader remarked.

> **The real challenge for organizations is not figuring out “What can we do?” but rather “Are we willing to do it?”**

Despite these beliefs, many studies in the 21st century have documented that racial discrimination is prevalent in the workplace, and that organizations with strong commitments to diversity are no less likely to discriminate. In fact, research by Cheryl Kaiser and colleagues has demonstrated that the presence of diversity values and structures can actually make matters worse, by lulling an organization into complacency and making Blacks and ethnic minorities more likely to be ignored or harshly treated when they raise valid concerns about racism.

Many White people deny the existence of racism against people of color because they assume that racism is defined by deliberate actions motivated by malice and hatred. However, racism can occur without conscious awareness or intent. When defined simply as differential evaluation or treatment based solely on race, regardless of intent, racism occurs far more frequently than most White people suspect. Let’s look at a few examples.

In a well-publicized résumé study by the economists Marianne Bertrand and Sendhil Mullainathan, applicants with White-sounding names (such as Emily Walsh) received, on average, 50% more callbacks for interviews than equally qualified applicants with Black-sounding names (such as Lakisha Washington). The

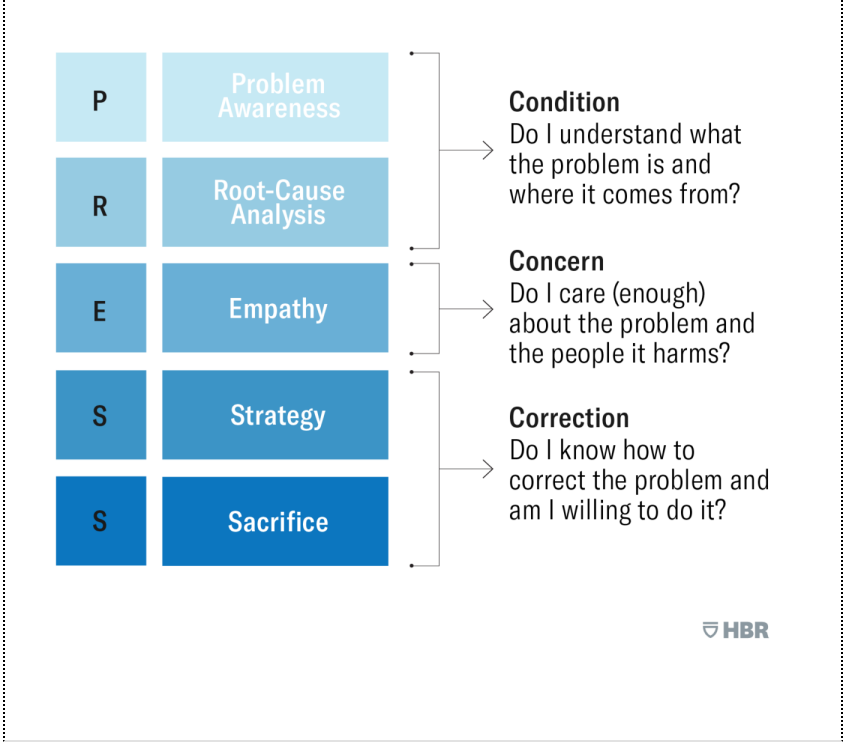
researchers estimated that just being White conferred the same benefit as an additional eight years of work experience—a dramatic head start over equally qualified Black candidates.

Research shows that people of color are well-aware of these discriminatory tendencies and sometimes try to counteract them by masking their race. A 2016 study by Sonia Kang and colleagues found that 31% of the Black professionals and 40% of the Asian professionals they interviewed admitted to "Whitening" their résumés, either by adopting a less "ethnic" name or omitting extracurricular experiences (a college club membership, for instance) that might reveal their racial identities.

These findings raise another question: Does Whitening a résumé actually benefit Black and Asian applicants, or does it disadvantage them when applying to organizations seeking to increase diversity? In a follow-up experiment, Kang and her colleagues sent Whitened and non-Whitened résumés of Black or Asian applicants to 1,600 real-world job postings across various industries and geographical areas in the United States. Half of these job postings were from companies that expressed a strong desire to seek diverse candidates. They found that Whitening résumés by altering names and extracurricular experiences increased the callback rate from 10% to nearly 26% for Blacks, and from about 12% to 21% for Asians. What's particularly unsettling is that a company's stated commitment to diversity failed to diminish this preference for Whitened résumés.

A Road Map for Racial Equity

Organizations move through these stages sequentially, first establishing an understanding of the underlying condition, then developing genuine concern, and finally focusing on correcting the problem.



This is a very small sample of the many studies that have confirmed the prevalence of racism in the workplace, all of which underscore the fact that people's beliefs and biases must be recognized and addressed as the first step toward progress. Although some leaders acknowledge systemic racism in their organizations and can skip step one, many may need to be convinced that racism persists, despite their "race neutral" policies or pro-diversity statements.

Root-Cause Analysis

Understanding an ailment's roots is critical to choosing the best remedy. Racism can have many psychological sources—cognitive biases, personality characteristics, ideological worldviews, psychological insecurity, perceived threat, or a need for power and ego enhancement. But most racism is the result of structural factors—established laws, institutional practices, and cultural norms. Many of these causes do not involve malicious intent. Nonetheless, managers often misattribute workplace discrimination to the character of individual actors—the so-called bad apples—rather than to broader structural factors. As a result, they roll out trainings to "fix" employees while dedicating relatively little attention to what may be a toxic organizational

culture, for example. It is much easier to pinpoint and blame individuals when problems arise. When police departments face crises related to racism, the knee-jerk response is to fire the officers involved or replace the police chief, rather than examining how the culture licenses, or even encourages, discriminatory behavior.

Appealing to circumstances beyond one's control is another way to exonerate deeply embedded cultural or institutional practices that are responsible for racial disparities. For example, an oceanographic organization I worked with attributed its lack of racial diversity to an insurmountable pipeline problem. "There just aren't any Black people out there studying the migration patterns of the humpback whale," one leader commented. Most leaders were unaware of the National Association of Black Scuba Divers, an organization boasting thousands of members, or of Hampton University, a historically Black college on the Chesapeake Bay, which awards bachelor's degrees in marine and environmental science. Both were entities that could source Black candidates for the job, especially given that the organization only needed to fill dozens, not thousands, of openings.

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A *Fortune* 500 company I worked with cited similar pipeline problems. Closer examination revealed, however, that the real culprit was the culture-based practice of promoting leaders from within the organization—which already had low diversity—rather than conducting a broader industry-wide search when leadership positions became available. The larger lesson here is that an organization's lack of diversity is often tied to inadequate recruitment efforts rather than an empty pipeline. Progress requires a deeper diagnosis of the routine practices that drive the outcomes leaders wish to change.

To help managers and employees understand how being embedded within a biased system can unwittingly influence outcomes and behaviors, I like to ask them to imagine being fish in a stream. In that stream, a current exerts force on everything in the water, moving it downstream. That current is analogous to systemic racism. If you do nothing—just float—the current will carry you along with it, whether you're aware of it or not. If you actively discriminate by swimming with the current, you will be propelled faster. In both cases, the current takes you in the same direction. From this perspective, racism has less to do with what's in your heart or mind and more to do with how your actions or inactions amplify or enable the systemic dynamics already in place.

Workplace discrimination often comes from well-educated, well-intentioned, open-minded, kindhearted people who are just floating along, severely underestimating the tug of the prevailing current on their actions, positions, and outcomes. Anti-racism requires swimming against that current, like a salmon making its way upstream. It demands much more effort, courage, and determination than simply going with the flow.

In short, organizations must be mindful of the "current," or the structural dynamics that permeate the system, not just the "fish," or individual actors that operate within it.

Empathy

Once people are aware of the problem and its underlying causes, the next question is whether they care enough to do something about it. There is a difference between sympathy and empathy. Many White people experience sympathy, or pity, when they witness racism. But what's more likely to lead to action in confronting the problem is empathy—experiencing the same hurt and anger that people of color are feeling. People of color want solidarity—and social justice—not sympathy, which simply quiets the symptoms while perpetuating the disease.

If your employees don't believe that racism exists in the company, then diversity initiatives will be perceived as the problem, not the solution.

One way to increase empathy is through exposure and education. The video of George Floyd's murder exposed people to the ugly reality of racism in a visceral, protracted, and undeniable way. Similarly, in the 1960s, northern Whites witnessed innocent Black protesters being beaten with batons and blasted with fire hoses on television. What best prompts people in an organization to register concern about racism in their midst, I've found, are the moments when their non-White coworkers share vivid, detailed accounts of the negative impact that racism has on their lives. Managers can raise awareness and empathy through psychologically safe listening sessions—for employees who want to share their experiences, without feeling obligated to do so—supplemented by education and experiences that provide historical and scientific evidence of the persistence of racism.

For example, I spoke with Mike Kaufmann, CEO of Cardinal Health—the 16th largest corporation in America—who credited a visit to the Equal Justice Initiative's National Memorial for Peace and Justice, in Montgomery, Alabama as a pivotal moment for the company. While diversity and inclusion initiatives have been a priority for Mike and his leadership team for well over a decade, their focus and conversations related to racial inclusion increased significantly during 2019. As he expressed to me, "Some Americans think when slavery ended in the 1860s that African Americans have had an equal opportunity ever since. That's just not true. Institutional systemic racism is still very much alive today; it's never gone away." Kaufmann is planning a comprehensive education program, which will include a trip for executives and other employees to visit the museum, because he is convinced that the experience will change hearts, open eyes, and drive action and behavioral change.

Empathy is critical for making progress toward racial equity because it affects whether individuals or organizations take any action and if so, what kind of action they take. There are at least four ways to respond to racism: join in and add to the injury, ignore it and mind your own business, experience sympathy and bake cookies for the victim, or experience empathic outrage and take measures to promote equal justice. The personal values of individual employees and the core values of the organization are two factors that affect which actions are undertaken.

Strategy

After the foundation has been laid, it's finally time for the "what do we do about it" stage. Most actionable strategies for change address three distinct but interconnected categories: personal attitudes, informal cultural norms, and formal institutional policies.

To most effectively combat discrimination in the workplace, leaders should consider how they can run interventions on all three of these fronts simultaneously. Focusing only on one is likely to be ineffective and could even backfire. For example, implementing institutional diversity policies without any attempt to create buy-in from employees is likely to produce a backlash. Likewise, focusing just on changing attitudes without also establishing institutional policies that hold people accountable for their decisions and actions may generate little behavioral change among those who don't agree with the policies. Establishing an anti-racist organizational culture, tied to core values and modeled by behavior from the CEO and other top leaders at the company, can influence both individual attitudes and institutional policies.

Just as there is no shortage of effective strategies for losing weight or promoting environmental sustainability, there are ample strategies for reducing racial bias at the individual, cultural, and institutional levels. The hard part is getting people to actually adopt them. Even the best strategies are worthless without implementation.

Fairness requires treating people equitably—which may entail treating people differently, but in a way that makes sense.

I'll discuss how to increase commitment to execution in the final section. But before I do, I want to give a specific example of an institutional strategy that works. It comes from Massport, a public organization that owns Boston Logan International Airport and commercial lots worth billions of dollars. When its leaders decided they wanted to increase diversity and inclusion in real estate development in Boston's booming Seaport District, they decided to leverage their land to do it. Massport's leaders made formal changes to the selection criteria determining who is awarded lucrative contracts to build and operate hotels and other large commercial buildings on their parcels. In addition to evaluating three traditional criteria—the developer's experience and financial capital, Massport's revenue potential, and the project's architectural design—they added a fourth criterion called "comprehensive diversity and inclusion," which accounted for 25% of the proposal's overall score, the same as the other three. This forced developers not only to think more deeply about how to create diversity but also to go out and do it. Similarly, organizations can integrate diversity and inclusion into managers' scorecards for raises and promotions—if they think it's important enough. I've found that the real barrier to diversity is not figuring out "What can we do?" but rather "Are we willing to do it?"

Sacrifice

Many organizations that desire greater diversity, equity, and inclusion may not be willing to invest the time, energy, resources, and commitment necessary to make it happen. Actions are often inhibited by the assumption that achieving one desired goal requires sacrificing another desired goal. But that's not always the case. Although nothing worth having is completely free, racial

equity often costs less than people may assume. Seemingly conflicting goals or competing commitments are often relatively easy to reconcile—once the underlying assumptions have been identified.

As a society, are we sacrificing public safety and social order when police routinely treat people of color with compassion and respect? No. In fact, it's possible that kinder policing will actually increase public safety. Famously, the city of Camden, New Jersey, witnessed a 40% drop in violent crime after it reformed its police department, in 2012, and put a much greater emphasis on community policing.

The assumptions of sacrifice have enormous implications for the hiring and promotion of diverse talent, for at least two reasons. First, people often assume that increasing diversity means sacrificing principles of fairness and merit, because it requires giving "special" favors to people of color rather than treating everyone the same. But take a look at the scene below. Which of the two scenarios appears more "fair," the one on the left or the one on the right?

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People often assume that fairness means treating everyone *equally*, or exactly the same—in this case, giving each person one crate of the same size. In reality, fairness requires treating people *equitably*—which may entail treating people differently, but in a way that makes sense. If you chose the scenario on the right, then you subscribe to the notion that fairness can require treating people differently in a sensible way.

Of course, what is "sensible" depends on the context and the perceiver. Does it make sense for someone with a physical disability to have a parking space closer to a building? Is it fair for new parents to have six weeks of paid leave to be able to care for their baby? Is it right to allow active-duty military personnel to board an airplane early to express gratitude for their service? My answer is yes to all three questions, but not everyone will agree. For this reason, equity presents a greater challenge to gaining consensus than equality. In the first panel of the fence scenario, everybody gets the same number of crates. That's a simple solution. But is it fair?

In thinking about fairness in the context of American society, leaders must consider the unlevel playing fields and other barriers that exist—provided they are aware of systemic racism. They must also have the courage to make difficult or controversial calls. For example, it might make sense to have an employee resource group for Black employees but not White employees. Fair outcomes may require a process of treating people differently. To be clear, different treatment is not the same as "special" treatment—the latter is tied to favoritism, not equity.

> **There is no test or interview that can invariably identify the "best candidate." Instead, hire good people and invest in their potential.**

One leader who understands the difference is Maria Klawe, the president of Harvey Mudd College. She concluded that the only way to increase the representation of women in computer science was to treat men and women differently. Men and women tended to have different levels of computing experience prior to entering college—different levels of *experience*, not intelligence or potential. Society treats boys and girls differently throughout secondary school—encouraging STEM subjects for boys but liberal arts subjects for girls, creating gaps in experience. To

compensate for this gap created by bias in society, the college designed two introductory computer-science tracks—one for students with no computing experience and one for students with some computing experience in high school. The no-experience course tended to be 50% women whereas the some-experience course was predominantly men. By the end of the semester, the students in both courses were on par with one another. Through this and other equity-based interventions, Klawe and her team were able to dramatically increase the representation of women and minority computer-science majors and graduates.

The second assumption many people have is that increasing diversity requires sacrificing high quality and standards. Consider again the fence scenario. All three people have the same height or "potential." What varies is the level of the field and the fence—apt metaphors for privilege and discrimination, respectively. Because the person on the far left has lower barriers to access, does it make sense to treat the other two people differently to compensate? Do we have an obligation to do so when differences in outcomes are caused by the field and the fence, not someone's height? Maria Klawe sure thought so. How much human potential is left unrealized within organizations because we do not recognize the barriers that exist?

Further Reading

"U.S. Businesses Must Take Meaningful Action Against Racism" Laura Morgan Roberts and Ella F. Washington

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Finally, it's important to understand that quality is difficult to measure with precision. There is no test, instrument, survey, or interviewing technique that will enable you to invariably predict who the "best candidate" will be. The NFL draft illustrates the

difficulty in predicting future job performance: Despite large scouting departments, plentiful video of prior performance, and extensive tryouts, almost half of first round picks turn out to be busts. This may be true for organizations as well. Research by Sheldon Zedeck and colleagues on corporate hiring processes has found that even the best screening or aptitude tests predict only 25% of intended outcomes, and that candidate quality is better reflected by "statistical bands" rather than a strict rank ordering. This means that there may be absolutely no difference in quality between the candidate who scored first out of 50 people and the candidate who scored eighth.

The big takeaway here is that "sacrifice" may actually involve giving up very little. If we look at people within a band of potential and choose the diverse candidate (for example, number eight) over the top scorer, we haven't sacrificed quality at all—statistically speaking—even if people's intuitions lead them to conclude otherwise.

Managers should abandon the notion that a "best candidate" must be found. That kind of search amounts to chasing unicorns. Instead, they should focus on hiring well-qualified people who show good promise, and then should invest time, effort, and resources into helping them reach their potential.

CONCLUSION

The tragedies and protests we have witnessed this year across the United States have increased public awareness and concern about racism as a persistent problem in our society. The question we now must confront is whether, as a nation, we are willing to do the hard work necessary to change widespread attitudes, assumptions, policies, and practices. Unlike society at large, the workplace very often requires contact and cooperation among people from different racial, ethnic, and cultural backgrounds. Therefore, leaders should host open and candid conversations about how their organizations are doing at each of the five stages of the model—and use their power to *press* for profound and perennial progress.

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U.S. Equal Employment Opportunity Commission

Hiring Initiative to Reimagine Equity (HIRE)

The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) are joining together to reimagine hiring and recruitment practices in ways that advance equal employment opportunity and help provide access to good jobs for workers.

America works best when we expand opportunity to allow all of us to realize our full potential and contribute to the country's economic success. The disproportionate impact of COVID-19 on underserved communities, the growing recognition of systemic inequality, and calls for racial justice have brought national attention to the unfinished business of equal opportunity. Many employers have recognized that they have an important role to play by strengthening their diversity, equity, inclusion, and accessibility efforts in their workplaces. As our nation recovers from the pandemic, we are committed to building an inclusive economy that works for everyone.

The Hiring Initiative to Reimagine Equity (HIRE) is a multi-year collaborative effort that will engage a broad array of stakeholders to expand access to good jobs for workers from underrepresented communities and help address key hiring and recruiting challenges.

HIRE will:

- Host convenings to examine organizational policy and practices to reimagine equity and expand opportunity in hiring.
- Identify strategies to remove unnecessary barriers to hiring, and to promote effective, job-related hiring and recruitment practices to cultivate a diverse pool of qualified workers.

- Promote equity in the use of tech-based hiring systems.
- Develop resources to promote adoption of innovative and evidence-based recruiting and hiring practices that advance equity.

HIRE Resources

- **Fact Sheet: Hiring Initiative to Reimagine Equity (HIRE) (https://www.eeoc.gov/hiring-initiative-reimagine-equity-hire-fact-sheet)**

U.S. Equal Employment Opportunity Commission

Hiring Initiative to Reimagine Equity (HIRE) Fact Sheet

A Joint Initiative of the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP)

What is HIRE?

HIRE is a multi-year collaborative effort chaired by EEOC Chair Charlotte A. Burrows and OFCCP Director Jenny R. Yang, which will engage a broad array of stakeholders to expand access to good jobs for workers from underrepresented communities and help address key hiring and recruiting challenges.

We are inviting employer, civil rights, and worker communities to reimagine hiring practices in ways that advance equal employment opportunity and help provide workers access to good jobs. As our nation makes major investments in our infrastructure and recovery, HIRE will:

- Host convenings on organizational policy and practices to reimagine equity and expand opportunity in hiring.
- Identify strategies to remove unnecessary barriers to hiring and to promote effective, job-related hiring and recruitment practices to cultivate a diverse pool of qualified workers.
- Promote equity in the use of tech-based hiring systems.

- Develop resources to promote adoption of innovative and evidence-based, recruiting and hiring practices that advance equity.

Why did we launch HIRE?

America works best when we expand opportunity to allow all of us to realize our full potential and contribute to the country's economic success. COVID-19's disproportionate impact on underserved communities, the growing recognition of systemic inequality, and calls for racial justice have brought national attention to the unfinished business of equal opportunity. Many employers have recognized that they have an important role to play by strengthening diversity, equity, inclusion, and accessibility (DEIA) efforts in their workplaces.

Even before the pandemic, workers from underrepresented communities faced barriers to employment opportunity. For example, studies show that hiring officials are significantly less likely to call back applicants with Black, Hispanic and Asian-sounding names than applicants with White-sounding names—even when they have comparable resumes.**[1]** Studies have also shown that artificial intelligence and algorithmic systems modeled on past practices can replicate biases that screen out diverse populations—as was the case with one artificial intelligence system that preferred male candidates over women based on past hiring practices.**[2]**

The pandemic's devastating impact on employment has hit some people of color, women, individuals with disabilities, LGBTQ+ individuals, older workers, and others particularly hard, compounding the impact of systemic barriers to hiring and advancement, including discrimination, longstanding occupational segregation, and other drivers of inequality that existed before the pandemic.

- In **April 2020 (https://www.bls.gov/news.release/archives/empsit_05082020.pdf)**, the pandemic caused nearly 16 million people to lose their jobs.
- Today, our economy is rebounding and continuing to add jobs, but many communities still face high levels of unemployment. For example, in December 2021, the **jobless rate (https://www.bls.gov/news.release/pdf/empsit.pdf)** for Blacks was 7.1%, Hispanics 4.9%, and Asians 3.8%, compared to the jobless rate of 3.2% for Whites. Alaska Natives and American Indians have also experienced high rates of **unemployment**

(https://www.bls.gov/opub/mlr/2019/article/american-indians-and-alaska-natives-in-the-u-s-labor-force.htm), including during the pandemic.**[3]**

- The job recovery for women, who typically shoulder caregiving responsibilities, has been slower compared to the rate of job recovery for men. For example, in December 2021, the **jobless rate (https://www.bls.gov/news.release/pdf/empsit.pdf)** for Black women was 6.2%, Hispanic women 4.9% and White women 3.1% as compared to 3.0% for White men.
- In 2020, the **unemployment rate (https://www.bls.gov/news.release/disabl.nr0.htm)** for people with disabilities rose to 12.6%, increasing more than 5% from the year before.
- A larger share of LGBT adults compared to non-LGBT adults report that they or someone in their household has experienced COVID-era job loss (56% v. 44%), according to a recent study.**[4]**
- In October 2021, the percentage of long-term unemployed jobseekers ages 55 and older was 41.2% (compared to 32.2% for ages 16 to 54).**[5]**

In addition, recent data indicate that many employers are not including disability and age**[6]** as part of their diversity, equity, and inclusion efforts.

How will this initiative expand opportunity?

HIRE will work to inform workplace DEIA initiatives by developing a better understanding among employers of the needs and challenges faced by various underrepresented communities. Especially now, as employers confront changing labor market dynamics, many are searching for strategies to recruit and hire from new and diverse talent sources. We are committed to helping ensure that as our nation recovers from the pandemic, we build an inclusive economy that works for everyone.

What can we expect to see from HIRE?

HIRE will engage a broad array of stakeholders in pursuit of a common goal – to expand access to good jobs for workers from underrepresented communities and help address key hiring and recruiting challenges.

Many employers and worker organizations are seeking actionable strategies to ensure DEIA programs promote meaningful progress while ensuring compliance with equal opportunity laws. EEOC and OFCCP will convene a series of roundtables and meetings, as well as public forums to identify actionable strategies to promote organizational policies and practices that advance equity. EEOC and OFCCP will develop resources such as guidance documents or promising practice resources. These resources will promote the adoption of evidence-based research and innovative initiatives that help embed equity in recruitment and hiring practices.

How can I get involved?

We look forward to engaging a broad array of employers, federal contractors, worker and civil rights organizations, social scientists, and others working to develop innovative recruiting and hiring initiatives. Please share resources, research and ideas at **HIRE-initiative@eeoc.gov** and **HIRE-initiative@dol.gov**.

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[6] "Although over 90% of employers claimed to prioritize disability, only 4% included workers with disability in [DEIA] initiatives." Caroline Casey, *Do Your D&I Efforts Include People With Disabilities?*, Harv. Bus. Rev. (Mar. 19, 2020), **https://hbr.org/2020/03/do-your-di-efforts-include-people-with-disabilities#:~:text=Although%2090%25%20of%20companies%20claim,the%20Return%20On%20Disability%20Group.&text=As%20workers%2C%20they%20can%20ease,better%20decision%2Dmaking%20and%20innovation (https://hbr.org/2020/03/do-your-di-efforts-include-people-with-disabilities#:~:text=Although%2090%25%20of%20companies%20claim,the%20Return%20On%20Disability%20Group.&text=As%20workers%2C%20they%20can%20ease,better%20decision%2Dmaking%20and%20innovation)**; "More than half of the 6,000 global employers surveyed by AARP in 2020 revealed that they do not include age in diversity and inclusion policies." Heather Tinsley-Fix, *6 Ways to Add Age in Your Diversity and Inclusion Guide*, AARP (Mar. 15, 2021), **https://www.aarp.org/work/employers/info-2021/age-diversity-inclusion-guide.html (https://www.aarp.org/work/employers/info-2021/age-diversity-inclusion-guide.html)**.